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SENATE, No. 2804



STATE OF NEW JERSEY

217th LEGISLATURE



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District 38 (Bergen and Passaic)

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SYNOPSIS

Establishes New Jersey First-Time Home Buyer Savings Account Program; provides gross income tax benefits for certain contributions to and earnings on assets maintained in accounts established under program.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 15, 2017, with amendments.



An Act establishing the New Jersey First-Time Home Buyer Savings Account Program and providing **1[**a**]1** gross income tax **1[**exclusion**]** benefits**1** for certain **1**contributions to and**1** earnings on assets maintained in accounts established under the program, supplementing Title 55 of the Revised Statutes and Title 54A of the New Jersey Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in sections 1 through 7 of P.L. , c. (C. ) (pending before the Legislature as this bill):

“Certified first-time home buyer” means an individual or individuals certified as a first-time home buyer by the New Jersey Housing and Mortgage Finance Agency in accordance with section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“Eligible expenses” means the down payment and any closing costs enumerated in the qualified home purchase settlement statement, which shall include but shall not be limited to appraisal fees, mortgage origination fees, and inspection fees.

“Financial institution” means a State or federally chartered bank, savings bank, savings and loan association, credit union, or other entity held out to the public as a place of deposit of funds or medium of savings or investment that has been approved by the New Jersey Housing and Mortgage Finance Agency.

“First-time home buyer savings account” means a savings, deposit, investment, or other brokerage account opened by a certified first-time home buyer with a financial institution that has entered into an agreement with the New Jersey Housing and Mortgage Finance Agency in accordance with section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“Principal residence” means a qualified residential property actually and continually occupied by the certified first-time home buyer as the certified first-time home buyer’s permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the certified first-time home buyer, and other secondary real property holdings.

“Qualified home purchase” means: the acquisition, by sale, of a qualified residential property located in this State which is occupied as a certified first-time homebuyer’s principal residence; or the construction of a new qualified residential property located in this State paid for by the certified first-time home buyer and occupied as the certified first-time home buyer’s principal residence.

“Qualified residential property” means: a dwelling house; a condominium unit under the form of real property ownership provided for under the “Condominium Act,” P.L.1969, c.257 (C.46:8B-1 et seq.); a unit in a cooperative or mutual housing corporation; a unit in a horizontal property regime under the form of real property ownership provided under the “Horizontal Property Act,” P.L.1963, c.168 (C.46:8A-1 et seq.); a unit in a continuing care retirement community; or a manufactured home that is taxable as real property or that is installed in a mobile home park.

2. There is established the New Jersey First-Time Home Buyer Savings Account Program.

The program shall be under the direction and control of the New Jersey Housing and Mortgage Finance Agency and shall be administered by the executive director of the agency and any clerical, technical, and other professional staff as may be designated by the executive director from among the personnel appointed and employed by the agency.

The purpose of the program shall be to encourage first-time home ownership by providing for the establishment of first-time home buyer savings accounts and authorizing tax incentives for earnings on assets maintained in those accounts.

To effectuate those purposes, the agency shall: make and enter into agreements with financial institutions capable of establishing and maintaining first-time home buyer savings accounts; certify first-time home buyers eligible to participate in the program; and administer and enforce program reporting and compliance requirements.

3. The New Jersey Housing and Mortgage Finance Agency shall enter into an agreement with each financial institution that expresses to the agency in writing an interest in establishing and maintaining first-time home buyer savings accounts in accordance with the program.

The agreement shall require the financial institution entering the agreement to allow a certified first-time home buyer to open a savings, deposit, investment, or other brokerage account with the financial institution and designate the account in its entirety as a first-time home buyer savings account.

The agreement shall require the financial institution entering the agreement to allow a certified first-time home buyer to contribute cash or other marketable securities to the account and to transfer to the account assets that may be held in another first-time home buyer savings account or held in another similar account maintained through a comparable program in another state or jurisdiction; provided, however, that the agreement shall include provisions stipulating that:

the maximum amount of cash or other marketable securities that may be contributed to an account for a taxable year shall not exceed $15,000;

the maximum amount of all cash or other marketable securities that may be contributed to an account for all taxable years shall not exceed $75,000; and

the maximum fair market value of all assets that may be maintained in an account in any taxable year shall not exceed $150,000.

The agreement shall require the financial institution entering the agreement to allow a certified first-time home buyer to make withdrawals and distribute assets maintained in a first-time home buyer savings account to pay eligible expenses incurred by the certified first-time home buyer for a qualified home purchase, to make transfers of assets to another first-time home buyer savings account or to another similar account maintained through a comparable program in another state or jurisdiction, and to pay fees charged to the certified first-time home buyer by the financial institution for the establishment or maintenance of the account.

The agreement shall require the financial institution entering the agreement to allow a certified first-time home buyer to make withdrawals and distribute assets maintained in a first-time home buyer savings account for any purpose other than to pay eligible expenses incurred by the certified first-time home buyer for a qualified home purchase, to make transfers of assets to another first-time home buyer savings account or to another similar account maintained through a comparable program in another state or jurisdiction, or to pay fees charged to the certified first-time home buyer by the financial institution for the establishment or maintenance of the account; provided, however, that the agreement shall include provisions stipulating that at the time the account is opened or at any time prior to the withdrawal or distribution of assets for such purposes the financial institution shall notify the certified first-time home buyer of the certified home buyer’s responsibility to report and pay any taxes and penalties that may be due and required to be paid as a result of the withdrawal or distribution of account assets for any purpose other than to pay eligible expenses, to make transfers to another first-time home buyer savings account or to another similar account, or to pay fees for the establishment or maintenance of the account.

The agreement shall include a provision that permits the agency to amend the agreement.

The agreement shall include a provision establishing the conditions under which the agreement may be terminated.

4. The New Jersey Housing and Mortgage Finance Agency shall establish an application process and prescribe the form and manner through which an individual or individuals seeking to open a first-time home buyer savings account may individually or collectively file an application to be certified as a first-time home buyer.

The application shall require the individual or individuals to provide information regarding:

the state or jurisdiction in which the individual or individuals currently reside;

the annual income of the individual or individuals;

the home ownership history of the individual or individuals;

the purposes to which the assets maintained in a first-time home buyer savings account will be used;

any home buyer education course attended or completed by the individual or individuals; and

any other first-time home buyer savings account or other similar account maintained by the individual or individuals through the program or through a comparable program in another state or jurisdiction.

The agency shall review each complete application and shall certify the individual or individuals as a first-time home buyer if the agency determines that the individual or individuals:

reside in this State or will reside in this State as a result of a qualified home purchase;

has or have annual gross income of not more than $175,000 in each of the three taxable years immediately preceding the taxable year in which the application is filed;

has or have not made a qualified home purchase, owned a principal residence located in this State, or owned residential property located in another state or jurisdiction that was actually and continually occupied by the individual or individuals as the individual’s or individuals’ permanent residence in the taxable year or the three taxable years immediately preceding the taxable year the application is filed;

will use assets maintained in a first-time home buyer savings account to pay eligible expenses incurred by the certified first-time home buyer for a qualified home purchase;

has or have attended or completed a home buyer education course, that has been approved by the agency, in the taxable year or the three taxable years immediately preceding the taxable year the application is filed; and

does or do not maintain any other first-time home buyer savings account or other similar account through the program or through a comparable program in another state or jurisdiction, or does or do maintain another first-time home buyer savings account or other similar account but will terminate that account within 90 days of the date the written certification is issued to the individual or individuals by the agency.

The agency shall issue a written certification to each individual certified as a first-time home buyer by the agency. The written certification shall be used by the certified first-time home buyer to open a first-time home buyer savings account. The written certification shall not be transferred, sold, or assigned to another person, and shall not be used to open another first-time home buyer savings account with the same or another financial institution, unless the individual is or the individuals are recertified as a first-time home buyer by the agency in accordance with this section.

5. The New Jersey Housing and Mortgage Finance Agency shall establish a reporting process and prescribe the form and manner through which a certified first-time home buyer shall annually report to the agency information regarding a first-time home buyer savings account.

The report shall require the certified first-time home buyer to provide the agency with information regarding:

the date the account was opened;

the financial institution through which the account is maintained;

the aggregate amount of cash or other marketable securities deposited to the account during the taxable year immediately preceding the taxable year in which the report is required to be filed;

the aggregate amount of any assets transferred to the account from any other financial institution during the taxable year immediately preceding the taxable year in which the report is required to be filed;

the fair market value of all assets maintained in the account as of the close of business on the last day of the taxable year immediately preceding the taxable year in which the report is required to be filed; and

the date, amount, and purpose of each withdrawal or distribution of assets made from the account during the taxable year immediately preceding the taxable year in which the report is required to be filed.

The report shall be filed with the agency on or before March 1 of each taxable year immediately following the taxable year in which the account was opened and shall be filed on or before that date each taxable year thereafter until the account is closed and the report providing information regarding the account during the last taxable year the account was open is filed with the agency.

The agency shall transmit a copy of each report filed by a certified first-time home buyer to the Director of the Division of Taxation in the Department of the Treasury within 30 days of the date the report is filed with the agency.

6. The New Jersey Housing and Mortgage Finance Agency shall impose a penalty on each certified first-time home buyer who makes a withdrawal or distributes assets maintained in a first-time home buyer savings account for any purpose other than to pay eligible expenses incurred by the certified first-time home buyer for a qualified home purchase, to make transfers of assets to another first-time home buyer savings account or to another similar account maintained through a comparable program in another state or jurisdiction, or to pay fees charged to the certified first-time home buyer by the financial institution for the establishment or maintenance of the account.

The amount of the penalty imposed pursuant to this section shall be equal to 10 percent of the assets withdrawn or distributed from the first-time home buyer savings account by the certified first-time home buyer, and shall be collected by the agency in a civil action in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.), in connection with this section. The penalty when recovered by the agency shall be deposited to the General Fund.

The penalty imposed by this section shall not apply to assets withdrawn or distributed from a first-time home buyer savings account due to: the death or disability of the certified first-time home buyer; or the disbursement of assets maintained in the account pursuant to an order for relief under Title 11 of the United States Bankruptcy Code or a comparable order under federal, state, or foreign law governing insolvency.

7. Notwithstanding any provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the New Jersey Housing and Mortgage Finance Agency may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the agency determines to be necessary and appropriate to implement and administer the program, which rules and regulations shall be effective for a period not to exceed 360 calendar days following the effective date of P.L. , c.   (C.       ) (pending before the Legislature as this bill) and may thereafter be amended, adopted, or readopted by the agency pursuant to the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

**1**8. a. A taxpayer who is a certified first-time home buyer shall be allowed a credit against the tax otherwise due for the taxable year under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount equal to five percent of up to $15,000 of contributions, or up to $7,500 of contributions for a married individual filing separately, that are made by the taxpayer during the taxable year to one first-time home buyer savings account.

b. The credit allowed pursuant to subsection a. of this section shall not reduce the tax liability otherwise due for the taxable year under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., to an amount less than zero. The amount of any unused credit resulting from the limitations of this subsection may be carried forward, if necessary, to the seven taxable years following the taxable year for which the credit was allowed. The form and method of carryforward shall be as prescribed by the director.

c. As used in this section:

“Certified first-time home buyer” and “first-time home buyer savings account” mean the same as those terms are defined by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).**1**

**1[**8.**]** 9.**1** a. Gross income shall not include earnings on a first-time home buyer savings account until the earnings are distributed from the account, at which time the **1**amount of the distribution attributable to**1** earnings **1**on the account and the amount of the distribution attributable to contributions allowed as a credit pursuant to section 8 of P.L. , c. (C. ) (pending before the Legislature as this bill)**1** shall be included in the gross income of the distributee except as provided in this section.

b. Gross income shall not include a qualified distribution as defined by subsection c. of this section.

c. For purposes of this section:

“Qualified distribution” means a withdrawal or distribution from a first-time home buyer savings account to:

pay eligible expenses incurred by a certified first-time home buyer for a qualified home purchase;

make transfers of assets to another first-time home buyer savings account or to another similar account maintained through a comparable program in another state or jurisdiction; and

pay fees charged to the certified first-time home buyer by the financial institution for the establishment or maintenance of the first-time home buyer savings account.

“First**1**-**1**time home buyer savings account,**1**”**1** “eligible expenses,” “certified first-time home buyer,” “qualified home purchase,” and “financial institution” mean the same as those terms are defined by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

d. The portion of a distribution from a first-time home buyer savings account that is attributable to earnings **1**and to contributions allowed as a credit pursuant to section 8 of P.L. , c. (C. ) (pending before the Legislature as this bill)**1** shall be determined in accordance with rules and regulations prescribed by the director.

**1[**9.**]** 10.**1** This act shall take effect immediately, but sections 1 through 6 shall remain inoperative until the first day of the seventh month next following the date of enactment and **1[**section**]** sections**1** 8 **1**and 9**1** shall apply to taxable years beginning on or after January 1 next following the date sections 1 through 6 are operative.