

CHAPTER 321

TAXATION

HOUSE BILL 16-1467

BY REPRESENTATIVE(S) Duran and Salazar, Arndt, Becker K., Buckner, Danielson, Esgar, Fields, Garnett, Ginal, Hamner, Kagan, Klingenschmitt, Kraft-Tharp, Lebsack, Lontine, McCann, Melton, Mitsch Bush, Moreno, Pabon, Pettersen, Primavera, Priola, Rosenthal, Roupe, Ryden, Singer, Tyler, Vigil, Williams, Winter, Young, Hullinghorst;
also SENATOR(S) Scheffel and Martinez Humenik, Aguilar, Carroll, Crowder, Donovan, Garcia, Guzman, Heath, Hodge, Johnston, Jones, Kefalas, Merrifield, Newell, Roberts, Tate, Todd, Ulibarri.

AN ACT**CONCERNING A STATE INCOME TAX DEDUCTION FOR AMOUNTS EARNED ON THE INVESTMENT OF MONEY IN A FIRST-TIME HOME BUYER SAVINGS ACCOUNT.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-22-104, **add** (3) (k) and (4) (w) as follows:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions - repeal. (3) There shall be added to the federal taxable income:

(k) THE AMOUNT RECAPTURED IN ACCORDANCE WITH SECTION 39-22-4705 (2).

(4) There shall be subtracted from federal taxable income:

(w) (I) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2017, TO THE EXTENT INCLUDED IN FEDERAL TAXABLE INCOME AND AS PERMITTED UNDER PART 47 OF THIS ARTICLE, AN AMOUNT EQUAL TO ANY INTEREST AND OTHER INCOME EARNED ON THE INVESTMENT OF THE MONEY IN A FIRST-TIME HOME BUYER SAVINGS ACCOUNT DURING THE TAXABLE YEAR.

(II) ANY EXCLUSION TAKEN UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (w) IS SUBJECT TO RECAPTURE UNDER PARAGRAPH (k) OF SUBSECTION (3) OF THIS SECTION AS SPECIFIED IN SECTION 39-22-4705.

SECTION 2. In Colorado Revised Statutes, **add** part 47 to article 22 of title 39

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

as follows:

PART 47
FIRST-TIME HOME BUYER
SAVINGS ACCOUNT

39-22-4701. Short title. THE SHORT TITLE OF THIS PART 47 IS THE "FIRST-TIME HOME BUYER SAVINGS ACCOUNT ACT".

39-22-4702. Legislative declaration. THE GENERAL ASSEMBLY DECLARES THAT THE PURPOSE FOR ALLOWING TAXABLE INCOME TO BE REDUCED BY EARNINGS FROM A FIRST-TIME HOME BUYER SAVINGS ACCOUNT IS TO ENCOURAGE FIRST-TIME HOME OWNERSHIP THROUGH INCENTIVIZING SAVING FOR A DOWN PAYMENT AND CLOSING COSTS BECAUSE OF THE SIGNIFICANT FINANCIAL AND CIVIC BENEFITS HOME OWNERSHIP PROVIDES FOR OUR STATE.

39-22-4703. Definitions. AS USED IN THIS PART 47, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACCOUNT HOLDER" MEANS AN INDIVIDUAL WHO ESTABLISHES AN ACCOUNT WITH A FINANCIAL INSTITUTION THAT IS DESIGNATED AS A FIRST-TIME HOME BUYER SAVINGS ACCOUNT IN ACCORDANCE WITH SECTION 39-22-4704.

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(3) "ELIGIBLE EXPENSES" MEANS A DOWN PAYMENT AND ANY CLOSING COSTS INCLUDED ON A REAL ESTATE SETTLEMENT STATEMENT, INCLUDING, BUT NOT LIMITED TO, APPRAISAL FEES, MORTGAGE ORIGATION FEES, AND INSPECTION FEES.

(4) "FINANCIAL INSTITUTION" MEANS ANY STATE BANK, STATE TRUST COMPANY, SAVINGS AND LOAN ASSOCIATION, FEDERALLY CHARTERED CREDIT UNION DOING BUSINESS IN COLORADO, CREDIT UNION CHARTERED BY THE STATE OF COLORADO, NATIONAL BANK, BROKER-DEALER, MUTUAL FUND, INSURANCE COMPANY, OR OTHER SIMILAR FINANCIAL ENTITY QUALIFIED TO DO BUSINESS IN THE STATE OF COLORADO.

(5) "FIRST-TIME HOME BUYER" MEANS AN INDIVIDUAL WHO:

(a) 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 IS ASSESSED AND TAXED AS REAL PROPERTY; OR

(b) AS A RESULT OF THE INDIVIDUAL'S DISSOLUTION OF MARRIAGE, HAS NOT BEEN LISTED ON A PROPERTY TITLE FOR AT LEAST THREE CONSECUTIVE YEARS OR MORE.

(6) "FIRST-TIME HOME BUYER SAVINGS ACCOUNT" OR "ACCOUNT" MEANS AN ACCOUNT WITH A FINANCIAL INSTITUTION DESIGNATED AS SUCH IN ACCORDANCE WITH SECTION 39-22-4704 (1).

(7) "QUALIFIED BENEFICIARY" MEANS A FIRST-TIME HOME BUYER DESIGNATED BY

AN ACCOUNT HOLDER FOR WHOM THE MONEY IN A FIRST-TIME HOME BUYER SAVINGS ACCOUNT IS OR WILL BE USED FOR ELIGIBLE EXPENSES FOR THE PURCHASE OF HIS OR HER PRIMARY RESIDENCE IN THE STATE.

39-22-4704. First-time home buyer savings account. (1) BEGINNING JANUARY 1, 2017, ANY INDIVIDUAL MAY OPEN AN ACCOUNT WITH A FINANCIAL INSTITUTION AND DESIGNATE THE ACCOUNT, IN ITS ENTIRETY, AS A FIRST-TIME HOME BUYER SAVINGS ACCOUNT TO BE USED TO PAY OR REIMBURSE A QUALIFIED BENEFICIARY'S ELIGIBLE EXPENSES FOR THE PURCHASE OF A PRIMARY RESIDENCE IN COLORADO. AN INDIVIDUAL MAY BE THE ACCOUNT HOLDER OF MULTIPLE ACCOUNTS, AND AN INDIVIDUAL MAY JOINTLY OWN THE ACCOUNT WITH ANOTHER PERSON IF THEY FILE A JOINT INCOME TAX RETURN. TO BE ELIGIBLE FOR THE SUBTRACTION UNDER SECTION 39-22-104 (4) (w) (I), AN ACCOUNT HOLDER MUST COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

(2) AN ACCOUNT HOLDER MUST DESIGNATE, NO LATER THAN APRIL 15 OF THE YEAR FOLLOWING THE TAXABLE YEAR DURING WHICH THE ACCOUNT IS ESTABLISHED, A FIRST-TIME HOME BUYER AS THE QUALIFIED BENEFICIARY OF THE FIRST-TIME HOME BUYER SAVINGS ACCOUNT. THE ACCOUNT HOLDER MAY DESIGNATE HIMSELF OR HERSELF AS THE QUALIFIED BENEFICIARY. THE ACCOUNT HOLDER MAY CHANGE THE DESIGNATED QUALIFIED BENEFICIARY AT ANY TIME, BUT THERE MAY NOT BE MORE THAN ONE QUALIFIED BENEFICIARY AT ANY TIME. AN ACCOUNT HOLDER CANNOT HAVE MULTIPLE ACCOUNTS WITH THE SAME QUALIFIED BENEFICIARY, BUT AN INDIVIDUAL MAY BE DESIGNATED AS THE QUALIFIED BENEFICIARY OF MULTIPLE ACCOUNTS.

(3) (a) THE FOLLOWING LIMITS APPLY TO A FIRST-TIME HOME BUYER SAVINGS ACCOUNT:

(I) THE MAXIMUM CONTRIBUTION TO A FIRST-TIME HOME BUYER SAVINGS ACCOUNT FOR A TAXABLE YEAR IS FOURTEEN THOUSAND DOLLARS FOR AN INDIVIDUAL AND TWENTY-EIGHT THOUSAND DOLLARS FOR ACCOUNT HOLDERS WHO FILE A JOINT RETURN;

(II) THE MAXIMUM AMOUNT OF ALL CONTRIBUTIONS FOR ALL TAXABLE YEARS TO A FIRST-TIME HOME BUYER SAVINGS ACCOUNT IS FIFTY THOUSAND DOLLARS; AND

(III) THE MAXIMUM TOTAL AMOUNT IN AN ACCOUNT IS ONE HUNDRED FIFTY THOUSAND DOLLARS.

(b) IF A LIMIT IN PARAGRAPH (a) OF THIS SUBSECTION (3) IS EXCEEDED, THEN THEREAFTER NO INTEREST OR OTHER INCOME EARNED ON THE INVESTMENT OF MONEY IN A FIRST-TIME HOME BUYER SAVINGS ACCOUNT MAY BE SUBTRACTED FROM TAXABLE INCOME UNDER SECTION 39-22-104 (4) (w) (I).

(c) MONEY MAY REMAIN IN A FIRST-TIME HOME BUYER SAVINGS ACCOUNT FOR UNLIMITED DURATION WITHOUT THE INTEREST OR INCOME BEING SUBJECT TO RECAPTURE OR PENALTY.

(4) THE ACCOUNT HOLDER SHALL NOT USE MONEY IN AN ACCOUNT TO PAY EXPENSES OF ADMINISTERING THE ACCOUNT; EXCEPT THAT A SERVICE FEE MAY BE

DEDUCTED FROM THE ACCOUNT BY A FINANCIAL INSTITUTION. THE ACCOUNT HOLDER IS RESPONSIBLE FOR MAINTAINING DOCUMENTATION FOR THE FIRST-TIME HOME BUYER SAVINGS ACCOUNT AND FOR ELIGIBLE EXPENSES RELATED TO THE QUALIFIED BENEFICIARY'S PURCHASE OF HIS OR HER PRIMARY RESIDENCE.

39-22-4705. Eligible expenses - penalties for other uses. (1) (a) FOR PURPOSES OF THE INCOME TAX BENEFIT CONFERRED UNDER THIS PART 47, THE MONEY IN A FIRST-TIME HOME BUYER SAVINGS ACCOUNT MAY BE:

(I) USED FOR ELIGIBLE EXPENSES RELATED TO A QUALIFIED BENEFICIARY'S PURCHASE OF HIS OR HER PRIMARY RESIDENCE IN THE STATE;

(II) USED FOR ELIGIBLE EXPENSES RELATED TO A QUALIFIED BENEFICIARY'S PURCHASE OF HIS OR HER PRIMARY RESIDENCE IN OR OUTSIDE THE STATE, IF THE QUALIFIED BENEFICIARY IS ACTIVE-DUTY MILITARY AND WAS STATIONED IN COLORADO FOR ANY TIME AFTER THE CREATION OF THE ACCOUNT;

(III) USED FOR EXPENSES THAT WOULD HAVE QUALIFIED UNDER SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a), BUT THE CONTRACT FOR PURCHASE DID NOT CLOSE;

(IV) TRANSFERRED TO ANOTHER NEWLY CREATED FIRST-TIME HOME BUYER SAVINGS ACCOUNT; OR

(V) USED TO PAY A SERVICE FEE THAT IS DEDUCTED BY THE FINANCIAL INSTITUTION.

(b) PARAGRAPH (a) OF THIS SUBSECTION (1) APPLIES REGARDLESS OF WHETHER THE QUALIFIED BENEFICIARY IS THE SOLE OWNER OF THE PRIMARY RESIDENCE OR JOINT OWNER WITH ANOTHER PERSON WHO DOES NOT QUALIFY AS QUALIFIED BENEFICIARY. THE MONEY IN A FIRST-TIME HOME BUYER ACCOUNT MAY NOT BE USED FOR THE PURPOSES IN SUBPARAGRAPHS (I), (II), AND (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1) RELATED TO THE PURCHASE OF A MANUFACTURED OR MOBILE HOME THAT IS NOT TAXED AS REAL PROPERTY.

(2) MONEY WITHDRAWN FROM A FIRST-TIME HOME BUYER SAVINGS ACCOUNT IS SUBJECT TO RECAPTURE IN THE TAXABLE YEAR IN WHICH IT IS WITHDRAWN BASED ON A PROPORTION FROM THE ACCOUNT SUBTRACTED UNDER 39-22-104 (4) (w) (I) TO THE TOTAL AMOUNT IN THE ACCOUNT, IF:

(a) AT THE TIME OF THE WITHDRAWAL, IT HAS BEEN LESS THAN A YEAR SINCE THE FIRST DEPOSIT IN THE FIRST-TIME HOME BUYER SAVINGS ACCOUNT; OR

(b) THE MONEY IS USED FOR ANY PURPOSE OTHER THAN THOSE SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

(3) IF ANY MONEY IS SUBJECT TO RECAPTURE UNDER PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, THE ACCOUNT HOLDER SHALL PAY TO THE DEPARTMENT A PENALTY IN THE SAME TAXABLE YEAR AS THE RECAPTURE. IF THE WITHDRAWAL WAS MADE TEN OR FEWER YEARS AFTER THE FIRST DEPOSIT IN THE FIRST-TIME HOME BUYER SAVINGS ACCOUNT, THEN THE PENALTY IS EQUAL TO FIVE

PERCENT OF THE AMOUNT SUBJECT TO RECAPTURE, AND IF THE WITHDRAWAL WAS MADE MORE THAN TEN YEARS AFTER THE FIRST DEPOSIT IN THE ACCOUNT, THEN THE PENALTY IS EQUAL TO TEN PERCENT OF THE AMOUNT SUBJECT TO RECAPTURE. BUT THESE PENALTIES DO NOT APPLY IF:

(a) THE MONEY IS USED FOR ELIGIBLE EXPENSES RELATED TO A QUALIFIED BENEFICIARY'S PURCHASE OF HIS OR HER PRIMARY RESIDENCE OUTSIDE OF THE STATE; OR

(b) THE MONEY IS FROM A FIRST-TIME HOME BUYER SAVINGS ACCOUNT FOR WHICH THE QUALIFIED BENEFICIARY DIES AND THE ACCOUNT HOLDER DOES NOT DESIGNATE A NEW QUALIFIED BENEFICIARY DURING THE SAME TAXABLE YEAR.

(4) IF THE ACCOUNT HOLDER OR, IF THE FIRST-TIME HOME BUYER SAVINGS ACCOUNT IS JOINTLY OWNED, ACCOUNT HOLDERS DIE, THEN ALL OF THE MONEY IN THE ACCOUNT THAT WAS SUBTRACTED FROM TAXABLE INCOME IS SUBJECT TO RECAPTURE IN THE TAXABLE YEAR OF THE DEATH OR DEATHS, BUT NO PENALTY IS DUE TO THE DEPARTMENT.

39-22-4706. Forms. THE DEPARTMENT SHALL ESTABLISH FORMS FOR AN ACCOUNT HOLDER TO ANNUALLY REPORT INFORMATION ABOUT A FIRST-TIME HOME BUYER SAVINGS ACCOUNT, INCLUDING, BUT NOT LIMITED TO, HOW THE MONEY FROM THE FUND IS USED, AND IDENTIFY ANY SUPPORTING DOCUMENTATION THAT IS REQUIRED TO BE MAINTAINED. TO BE ELIGIBLE FOR THE SUBTRACTION IN SECTION 39-22-104 (4) (w), AN ACCOUNT HOLDER MUST ANNUALLY FILE WITH HIS OR HER STATE INCOME TAX RETURN THE COMPLETED FORM, THE FORM 1099 FOR THE ACCOUNT ISSUED BY THE FINANCIAL INSTITUTION, AND ANY OTHER SUPPORTING DOCUMENTATION THE DEPARTMENT REQUIRES.

39-22-4707. Financial institutions. (1) A FINANCIAL INSTITUTION IS NOT REQUIRED TO:

(a) 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;

(b) TRACK THE USE OF MONEY WITHDRAWN FROM A FIRST-TIME HOME BUYER SAVINGS ACCOUNT; OR

(c) REPORT ANY INFORMATION TO THE DEPARTMENT OR ANY OTHER GOVERNMENTAL AGENCY THAT IS NOT OTHERWISE REQUIRED BY LAW.

(2) A FINANCIAL INSTITUTION IS NOT RESPONSIBLE OR LIABLE FOR:

(a) DETERMINING OR ENSURING THAT AN ACCOUNT HOLDER IS ELIGIBLE FOR A SUBTRACTION UNDER SECTION 39-22-104 (4) (w) (I);

(b) DETERMINING OR ENSURING THAT MONEY IN THE ACCOUNT IS USED FOR AN ELIGIBLE EXPENSE; OR

(c) REPORTING OR REMITTING TAXES OR PENALTIES RELATED TO USE OF MONEY

IN A FIRST-TIME HOME BUYER SAVINGS ACCOUNT.

(3) IN IMPLEMENTING THIS PART 47 AND SECTION 39-22-104 (3) (k) AND (4) (w), THE DEPARTMENT SHALL NOT ESTABLISH ANY ADMINISTRATIVE, REPORTING, OR OTHER REQUIREMENTS ON FINANCIAL INSTITUTIONS THAT ARE OUTSIDE THE SCOPE OF NORMAL ACCOUNT PROCEDURES.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 10, 2016