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LEGISLATURE OF NEBRASKA

ONE HUNDRED FOURTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 372

Introduced by Craighead, 6; Kolterman, 24; Lindstrom, 18.

Read first time January 15, 2015

Committee: Revenue

A BILL FOR AN ACT relating to first-time home buyers; to amend section 77-2716, Revised Statutes Cumulative Supplement, 2014; to adopt the First-time Home Buyer Savings Plan Act; to provide income tax adjustments as prescribed; and to repeal the original section.

Be it enacted by the people of the State of Nebraska, Section 1. Sections 1 to 6 of this act shall be known and may be cited as the First-time Home Buyer Savings Plan Act.

Sec. 2. For purposes of the First-time Home Buyer Savings Plan Act:

(1) Account holder means an individual who establishes, individually or jointly with one or more other individuals, an account with a financial institution for which the account holder claims a first-time home buyer savings account status on his or her state income tax return;

(2) Allowable closing costs means a disbursement listed on a settlement statement for the purchase of a single-family residence in this state by a qualified beneficiary;

(3) Eligible costs means the down payment and allowable closing costs for the purchase of a single-family residence in this state by a qualified beneficiary;

(4) Financial institution means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, or any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in this state;

(5) First-time home buyer savings account or account means an account with a financial institution for which the account holder claims first-time home buyer savings account status on his or her state income tax return for taxable year 2016 or any taxable year thereafter for the purpose of paying or reimbursing eligible costs for the purchase of a single-family residence in this state by a qualified beneficiary. Financial institutions shall not be required to (a) designate an account as a first-time home buyer savings account, or designate the beneficiaries of such accounts, in the financial institutions' account contracts or systems, (b) track the use of funds withdrawn from such accounts, (c) allocate funds in such accounts among joint account owners or multiple beneficiaries, or (d) report any of the information stated in subdivisions (5)(a), (b), or (c) of this section to the Department of

Revenue or other governmental agency. Financial institutions shall not be responsible for or liable for determining or ensuring that an account satisfies the requirements to be a first-time home buyer savings account, determining or ensuring that costs are eligible costs, or reporting or remitting taxes or penalties for such accounts;

(6) Qualified beneficiary means an individual or individuals only who reside in this state at the time of settlement on the purchase of a single-family residence in this state who (a) have never owned or purchased under contract for deed, either individually or jointly, a single-family residence, (b) are designated as the beneficiary of an account designated by the account holder as a first-time home buyer savings account, and (c) may apply funds held in such account for eligible costs. A qualified beneficiary may use the funds from such account for eligible costs regardless of whether such qualified beneficiary purchases the single-family residence as sole owner or jointly with another individual;

(7) Settlement statement means the statement of receipts and disbursements for a transaction related to real estate, including a statement prescribed under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as amended, and the regulations thereunder, or an executed sales agreement for the purchase of a manufactured home being conveyed as personal property; and

(8) Single-family residence means a single-family residence owned and occupied by a qualified beneficiary, including a manufactured home, trailer, mobile home, condominium unit, or cooperative.

Sec. 3. (1) The account holder shall be responsible for the use or application of funds in an account for which the account holder claims first-time home buyer savings account status.

(2) The account holder shall (a) not use funds held 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, (b) maintain

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documentation of the segregation of funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence in this state, and such documentation may include the settlement statement, (c) file, with the account holder's state income tax return, forms developed by the Department of Revenue regarding treatment of the account as a first-time home buyer savings account, along with the Form 1099 issued by the financial institution for such account, and (d) remit to the Department of Revenue the tax on any amounts added to individual income pursuant to section 77-2716 or recaptured pursuant to section 77-2716.

(3) The Tax Commissioner shall develop guidelines applicable to account holders to implement the provisions of the First-time Home Buyer Savings Plan Act. Such guidelines shall not apply to, or impose administrative, reporting, or other obligations or requirements on, financial institution-related accounts for which first-time home buyer savings account status is claimed by the account holder.

Sec. 4. (1) All interest or other income earned attributable to an account shall be excluded from the state taxable income of the account holder as provided under section 77-2716.

(2) There shall be an aggregate limit of fifty thousand dollars per account on the amount of principal for which the account holder may claim first-time home buyer savings account status. Only cash and marketable securities may be contributed to an account.

(3) Subject to the aggregate limit on the amount of principal that may be contributed to an account pursuant to subsection (2) of this section, there shall be a limitation of one hundred fifty thousand dollars on the amount of principal and interest or other income on the principal that may be retained within an account.

(4) An account holder shall be subject to state income tax pursuant to section 77-2716 to the extent of any loss deducted as a capital loss by the individual for federal income tax purposes attributable to the

person's account.

(5) Upon being furnished proof of the death of the account holder, a financial institution shall distribute the principal and accumulated interest or other income in the account in accordance with the terms of the contract governing the account.

Sec. 5. (1) If funds are withdrawn from an account for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, there shall be imposed a penalty calculated using the Form 1099 showing the amount of income exempted from state income tax and a five percent penalty shall be assessed on the amount of exempted income. The penalty shall be paid to the Department of Revenue. In addition, as provided under section 77-2716, the account holder shall also be subject to recapture of income that was subtracted pursuant to that section.

(2) Such five percent penalty shall not apply to, and there shall be no recapture of income with regard to, the extent of funds withdrawn that were (a) withdrawn by reason of the qualified beneficiary's death or disability, (b) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. sections 101 through 1330, or (c) transferred from an account established pursuant to the First-time Home Buyer Savings Plan Act into another account established pursuant to the act for the benefit of another qualified beneficiary.

Sec. 6. A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or billing to avoid or evade taxes or penalties upon the withdrawal of funds from an account for which the account holder claims first-time home buyer savings account status is guilty of a Class I misdemeanor.

Sec. 7. Section 77-2716, Revised Statutes Cumulative Supplement, 2014, is amended to read:

77-2716 (1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e)(i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

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(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code or from a limited liability company organized pursuant to the Nebraska Uniform Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject

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to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, to the extent not deducted for federal income tax purposes, but not to exceed five thousand dollars per married filing separate return or ten thousand dollars for any other return. With respect to a qualified rollover within the meaning of section 529 of the Internal Revenue Code from another state's plan, any interest, earnings, and state contributions received from the other state's educational savings plan which is qualified under section 529 of the code shall qualify for the reduction provided in this subdivision. For contributions by a custodian of a custodial account including rollovers from another custodial account, the reduction shall only apply to funds added to the custodial account after January 1, 2014.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

(9)(a) For income tax returns filed after September 10, 2001, for taxable years beginning or deemed to begin before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before December 31, 2005.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, subchapter S corporation, or joint venture, the increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

(10) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006,

under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

(11)(a) Federal adjusted gross income shall be reduced by contributions, up to two thousand dollars per married filing jointly return or one thousand dollars for any other return, and any investment earnings made as a participant in the Nebraska long-term care savings plan under the Long-Term Care Savings Plan Act, to the extent not deducted for federal income tax purposes.

(b) Federal adjusted gross income shall be increased by the withdrawals made as a participant in the Nebraska long-term care savings plan under the act by a person who is not a qualified individual or for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant, including withdrawals made by reason of cancellation of the participation agreement or termination of the plan, to the extent previously deducted as a contribution or as investment earnings.

(12) There shall be added to federal adjusted gross income for individuals, estates, and trusts any amount taken as a credit for franchise tax paid by a financial institution under sections 77-3801 to 77-3807 as allowed by subsection (5) of section 77-2715.07.

(13) For taxable years beginning or deemed to begin on or after January 1, 2015, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced by the amount received as benefits under the federal Social Security Act which are included in the federal adjusted gross income if:

(a) For taxpayers filing a married filing joint return, federal adjusted gross income is fifty-eight thousand dollars or less; or

(b) For taxpayers filing any other return, federal adjusted gross income is forty-three thousand dollars or less.

(14) For taxable years beginning or deemed to begin on or after January 1, 2015, under the Internal Revenue Code of 1986, as amended, an

individual may make a one-time election within two calendar years after the date of his or her retirement from the military to exclude income received as a military retirement benefit by the individual to the extent included in federal adjusted gross income and as provided in this subsection. The individual may elect to exclude forty percent of his or her military retirement benefit income for seven consecutive taxable years beginning with the year in which the election is made or may elect to exclude fifteen percent of his or her military retirement benefit income for all taxable years beginning with the year in which he or she turns sixty-seven years of age. For purposes of this subsection, military retirement benefit means retirement benefits that are periodic payments attributable to service in the uniformed services of the United States for personal services performed by an individual prior to his or her retirement.

(15)(a) For taxable years beginning or deemed to begin on or after January 1, 2016, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be increased by any loss for the taxable year that was deducted as a capital loss for federal income tax purposes by an account holder attributable to such person's first-time home buyer savings account established pursuant to the First-time Home Buyer Savings Plan Act.

(b) For taxable years beginning or deemed to begin on or after January 1, 2016, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced by any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time home buyer savings account established pursuant to the First-time Home Buyer Savings Plan Act and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.

(c) Any reduction taken under subdivision (15)(b) of this section

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shall be subject to recapture in the taxable year or years in which funds withdrawn from the first-time home buyer savings account were used for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under the First-time Home Buyer Savings Plan Act. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time. Recapture shall not apply to the extent of funds withdrawn that were withdrawn by reason of the qualified beneficiary's death or disability, a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. sections 101 through 1330, or transferred from an account established pursuant to the First-time Home Buyer Savings Plan Act into another account established pursuant to such act for the benefit of another qualified beneficiary.

Sec. 8. Original section 77-2716, Revised Statutes Cumulative Supplement, 2014, is repealed.