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LEGISLATURE OF NEBRASKA

ONE HUNDRED FIFTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 15

Introduced by Craighead, 6.

Read first time January 05, 2017

Committee: Revenue

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2716, Revised Statutes Cumulative Supplement, 2016; to adopt the First-Time Home Buyer Savings Account Act; to provide for income tax adjustments as prescribed; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

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Section 1. Sections 1 to 8 of this act shall be known and may be cited as the First-Time Home Buyer Savings Account Act.

Sec. 2. The Legislature declares that the purpose of 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 this state.

Sec. 3. For purposes of the First-Time Home Buyer Savings Account Act:

(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;

(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 origination fees, and inspection fees;

(4) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the Department of Banking and Finance, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company;

(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

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more;

(6) First-time home buyer savings account or account means an account with a financial institution designated as a first-time home buyer savings account in accordance with section 4 of this act; and

(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 the qualified beneficiary's primary residence.

Sec. 4. (1) Beginning January 1, 2018, 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 Nebraska. 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 subsection (15) of section 77-2716, 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 shall not be more than one qualified beneficiary at any time. An account holder shall not have multiple accounts with the same qualified beneficiary, but an individual may be designated as the qualified beneficiary of multiple accounts.

(3) The following limits apply to a first-time home buyer savings account:

(a) The maximum contribution to a first-time home buyer savings account for a taxable year is fourteen thousand dollars for an individual

<u>and twenty-eight thousand dollars for account holders who file a joint return;</u>

<u>(b) The maximum amount of all contributions for all taxable years to a first-time home buyer savings account is fifty thousand dollars; and</u>

<u>(c) The maximum total amount in an account is one hundred fifty thousand dollars.</u>

<u>(4) If a limit in subsection (3) of this section is exceeded, then thereafter no interest or other income earned on the investment of money in the first-time home buyer savings account may be subtracted from taxable income under subsection (15) of section 77-2716.</u>

<u>(5) 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.</u>

<u>(6) 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.</u>

<u>(7) 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.</u>

Sec. 5. <u>(1)(a) The money in a first-time home buyer savings account may be:</u>

<u>(i) Used for eligible expenses related to a qualified beneficiary’s purchase of his or her primary residence in this state;</u>

<u>(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 Nebraska for any time after the creation of the account;</u>

<u>(iii) Used for expenses that would have qualified under subdivision (1)(a)(i) or (ii) of this section, but the contract for purchase did not close;</u>

(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) Subdivision (1)(a) of this section applies regardless of whether the qualified beneficiary is the sole owner of the primary residence or a joint owner with another person who does not qualify as a qualified beneficiary.

(c) The money in a first-time home buyer savings account may not be used for the purposes described in subdivisions (1)(a)(i), (ii), and (iii) of this section if the primary residence being purchased is a manufactured or mobile home that is not taxed as real property.

(2)(a) Money withdrawn from a first-time home buyer savings account is subject to recapture in the taxable year in which it is withdrawn if:

(i) 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

(ii) The money is used for any purpose other than those authorized in subsection (1) of this section.

(b) The amount recaptured shall be determined by multiplying the amount withdrawn by a ratio, the numerator of which is the amount in the account that has been subtracted under subsection (15) of section 77-2716 and the denominator of which is the total amount in the account.

(3) If any money is subject to recapture pursuant to subdivision (2)(a)(ii) of this section, the account holder shall pay to the department a penalty in the same taxable year as the recapture. If the withdrawal is made ten or fewer years after the first deposit in the first-time home buyer savings account, the penalty is equal to five percent of the amount subject to recapture. If the withdrawal is made more than ten years after the first deposit in the account, the penalty is equal to ten percent of the amount subject to recapture. The penalties provided in this subsection do not apply if:

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(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, the account holders die, 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.

Sec. 6. The department shall establish a form 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 account is used, and shall identify any supporting documentation that is required to be maintained. To be eligible for the subtraction in subsection (15) of section 77-2716, an account holder must annually file with his or her state income tax return the completed form, the 1099 form for the account issued by the financial institution, and any other supporting documentation the department requires.

Sec. 7. (1) A financial institution is not required to:

(a) Designate an account as a first-time home buyer savings account, or designate the qualified 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 subsection (15) of section 77-2716;

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(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 the use of money in a first-time home buyer savings account.

(3) In implementing the First-Time Home Buyer Savings Account Act, the department shall not establish any administrative, reporting, or other requirements on financial institutions that are outside the scope of normal account procedures.

Sec. 8. The department may adopt and promulgate rules and regulations to carry out the First-Time Home Buyer Savings Account Act.

Sec. 9. Section 77-2716, Revised Statutes Cumulative Supplement, 2016, 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)(i) 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; and

(ii) There shall be subtracted interest received by the owner of obligations of the State of Nebraska or its political subdivisions or authorities which are Build America Bonds to the extent includable in gross income for federal income tax purposes;

(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

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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.

(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

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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 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;

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(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 and any account established under the achieving a better life experience program as provided in sections 77-1401 to 77-1409.

(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 or contributions to an account established under the achieving a better life experience program made for the benefit of a beneficiary as provided in sections 77-1401 to 77-1409, 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

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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:

(i) 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 under subdivision (8)(b) of this section; and

(ii) The amount of any withdrawals by the owner of an account established under the achieving a better life experience program as provided in sections 77-1401 to 77-1409 for nonqualified expenses to the extent previously deducted under subdivision (8)(b) of this section.

(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

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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) For taxable years beginning or deemed to begin before

January 1, 2018, under the Internal Revenue Code of 1986, as amended, 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) For taxable years beginning or deemed to begin before January 1, 2018, under the Internal Revenue Code of 1986, as amended, 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, 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

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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.

<u>(15)(a) For taxable years beginning or deemed to begin on or after January 1, 2018, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced, to the extent included, by an amount equal to any interest and other income earned during the taxable year on the investment of money in a first-time home buyer savings account established under the First-Time Home Buyer Savings Account Act. Any subtraction taken under this subdivision is subject to recapture under subdivision (15)(b) of this section.</u>

<u>(b) For taxable years beginning or deemed to begin on or after January 1, 2018, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be increased by any amount recaptured for the taxable year pursuant to section 5 of this act.</u>

Sec. 10. Original section 77-2716, Revised Statutes Cumulative Supplement, 2016, is repealed.