DEPARTMENT OF TAXATION
2013 Fiscal Impact Statement

1. Patron Thomas A. Greason

2. Bill Number HB 1868
House of Origin:
_____ **Introduced**
__X__ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Individual Income Tax; First-Time Homebuyer Savings Accounts

5. Summary/Purpose:

The Department understands that the Patron will offer a substitute for this bill. This fiscal impact statement is drafted based on the substitute version.

This bill would allow individuals to establish tax-exempt first-time home buyer savings accounts and to use distributions from such accounts for the down payment and allowable closing costs for the purchase of a single family residence in the Commonwealth.

All interest and other earned income attributable to an account would be excluded from the federal adjusted gross income of the account holder. Contributions of principal to an account would be limited to $50,000. Only cash and marketable securities would be allowed to be contributed to an account.

This bill would allow an account holder to claim a subtraction for any income that is (i) taxed as a capital gain for federal income tax purposes and attributable to an increase in the value of an investment contained in his first-time home buyer savings account and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account. This bill would also require an addition to an account holder's federal adjusted gross income for any loss for the taxable year that is deducted as a capital loss for federal income tax purposes and attributable to such person's first-time home buyer savings account.

The effective date of this bill is not specified. The Virginia income tax additions and subtraction created under this bill would be effective for taxable years beginning on or after January 1, 2013.

6. Budget amendment necessary: No.

7. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not "routine." Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Revenue Impact

This bill would have a minimal negative impact on General Fund revenues beginning in Fiscal Year 2014 and thereafter.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal Tax Credit for First-Time Home Buyers

Under federal law, first-time homebuyers who purchased a new home on or after April 8, 2008, but before October 1, 2010, were eligible for a tax credit equal to 10 percent of the purchase price of the home. The maximum tax credit was $7,500 in Taxable Year 2008 and $8,000 in Taxable Years 2009 and 2010. Taxpayers generally could not claim the credit for a home purchased after April 30, 2010. However, taxpayers could claim the tax credit if they entered into a written binding contract before May 1, 2010, to buy the home before July 1, 2010, and actually bought the home before October 1, 2010. Taxpayers who claimed the first-time homebuyer tax credit for a home purchased in Taxable Year 2008 were required to begin repaying the tax credit on their Taxable Year 2010 return. In addition, such taxpayers were required to repay any tax credit claimed on the Taxable Year 2008 or 2009 returns if they sold their home in Taxable Year 2010 or if the home stopped being their main home in Taxable Year 2010. Only homes that were purchased as the taxpayer's principal residence qualified for this tax credit. "First-time homebuyers" were defined as taxpayers who have not owned another principal residence at any time during the three years prior to the purchase date.

State Tax Incentives for First-Time Home Buyers

California

California allowed a tax credit to first-time home buyers who purchased a qualified personal residence on or after May 1, 2010, but before January 1, 2011. The tax credit was equal to the lesser of 5 percent of the purchase price of the qualified residence or $10,000. Taxpayers were required to apply the tax credit in equal amounts over three successive taxable years, beginning with the taxable year in which the home was purchased. The tax credit was capped at $100 million. “First-time home buyer” was defined as any individual, or an individual’s spouse, who had no present ownership interest in a principal residence during the preceding three-year period ending on the date of the purchase of the qualified personal residence.

Connecticut

Connecticut developed the “Live Here, Learn Here” program to encourage graduates of its public and private colleges and universities, regional vocational-technical schools, and health care training schools to buy their first homes in Connecticut. The program allows such graduates, who graduate on or after January 1, 2014, to have up to $2,500 of their annual income tax liability segregated into the Connecticut first-time homebuyers account. Collectively, no more than $1 million may be placed into the account annually. At anytime within ten years of his graduation, a graduate may withdraw the amount that he placed into such an account to use as a down payment on the purchase of his first home in Connecticut. Such funds may be used for no other purpose. Any remaining balance that is not withdrawn by a graduate within ten years of graduation will become part of Connecticut’s General Fund.

After making a withdrawal and using the money as a down payment on his first home, a graduate must live in Connecticut for at least five years in order to avoid repaying his withdrawal. If a graduate ceases to live in Connecticut within 1-year of making a withdrawal, he must pay back 100 percent of the withdrawn funds; within 1 to 2 years of making a withdrawal, he must pay back 80 percent of the withdrawn funds; within 2 to 3 years of making a withdrawal, he must pay back 60 percent of the withdrawn funds; within 3 to 4 years of making a withdrawal, he must pay back 40 percent of the withdrawn funds; and within 4 to 5 years of making a withdrawal, he must pay back 20 percent of the withdrawn funds. After 5 years, graduates have no obligation to repay withdrawn funds.

District of Columbia

The District of Columbia allows a $2,000 individual income tax credit to its government employees who are first-time homebuyers in the taxable year in which they purchase their first home and in the four succeeding taxable years. A “first-time homebuyer” is defined as a buyer who has no ownership interest in a principal residence at any time during the three-year period ending on the date he files an application for the tax credit.

Montana

Montana allows Montana residents to deposit up to $3,000 per year (up to $6,000 per year if married filing jointly) into a tax-exempt first-time home buyer savings account. Funds within such an account are tax-exempt as long as they are left in the account or are only withdrawn by a first-time home buyer to pay for eligible costs that are necessary to purchase a single-family home. A “first-time home buyer” is defined as an individual who has never owned or bought under contract or deed, either individually or jointly, a single-family residence in Montana or out-of-state. Eligible costs include down payments, closing costs, realtor’s fees, appraisal costs, credit history reports, points, pro-rated property taxes, home inspections, and loan origination fees. Funds withdrawn for any purpose other than the payment of eligible costs are taxed as ordinary income and subject to a 10 percent penalty.

Taxpayers may only contribute to such accounts for 10 years. Further, taxpayers must use the money in such accounts within 10 years after the year in which the account was established. Any amount left in the account that is not expended on eligible costs when the home is purchased or on December 31 of the last year of the 10-year period must be taxed as ordinary income.

Proposed Legislation

First-Time Home Buyer Savings Accounts

This bill would allow an account holder to establish a first-time home buyer savings account on behalf of a qualified beneficiary or beneficiaries in order to apply distributions from the account toward eligible costs.

A “first-time home buyer savings account” (“account”) would be defined as an account established with an account administrator.

An “account administrator” would be defined as (i) a financial institution (any bank, trust company, savings institution, industrial loan association, consumer finance company, or credit union); (ii) a person licensed as a certified public accountant; or (iii) the account holder. An “account holder” would be defined as an individual who establishes, individually or jointly, a first-time home buyer savings account.

“Eligible costs” would be defined as the down payment and allowable closing costs for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary. “Single-family residence” would mean an owner-occupied residence in the Commonwealth, including a manufactured home, trailer, or mobile home, that is an improvement to real property or a condominium unit that is owned by or that has been purchased under contract for deed by a person, individually or jointly.

A “qualified beneficiary” would mean an individual who resides in the Commonwealth who (i) has never owned or purchased under contract for deed, either individually or jointly, a single-family residence in the Commonwealth or outside of the Commonwealth, (ii) is

designated as the beneficiary of a first-time home buyer savings account, and (iii) may apply moneys or funds held in such account for eligible costs.
All interest or other income earned attributable to an account would be excluded from the federal adjusted gross income of the account holder. Contributions of principal to an account would be limited to $50,000. This bill would only allow cash and marketable securities to be contributed to such accounts. Subject to the $50,000 limitation on contributions of principal, there would be no limitation on the amount of principal and interest or other income on the principal that may be retained within such an account.

An account administrator would be required to administer the first-time home buyer savings account from which the payment of eligible costs for the purchase of a single-family residence is made. Except for reporting and remitting penalties to the Department, a financial institution would be required to administer a first-time home buyer savings account in accordance with the laws and regulations applicable to that financial institution. The account holder would be responsible for the use or application of funds held in such an account. An account administrator would be allowed to use funds held in a first-time home buyer savings account only for the purpose of paying the eligible costs of the account holder or paying the expenses of administering the account.

The account holder would be required to submit documentation of eligible costs paid or incurred to the account administrator, and the account administrator would be required to reimburse, or pay on behalf of, the account holder from the account holder's account such eligible costs that were paid or incurred. Such documentation may include, but would not be limited to, the settlement statement as defined in *Va. Code* § 55-525.16. The burden of proving that a withdrawal from a first-time home buyer's savings account was made for eligible costs would be upon the account holder and not upon the account administrator.

In the case of an account administrator who is also the account holder, the account administrator would (i) not use funds held in an account to pay expenses of administering the account, except that a service fee would be allowed to be deducted from the account by a financial institution or other holder of the account; (ii) maintain documentation of the segregation of funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence; (iii) file reports as required by the Department of Taxation; and (iv) remit to the Department of Taxation any penalty imposed.

A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money or funds from a first-time home buyer savings account would be guilty of a Class 1 misdemeanor.

Except for financial institutions, within 30 days of being furnished proof of the death of the account holder, the account administrator would be required to distribute the principal and accumulated interest or other income in the account to the estate of the account holder or to a designated beneficiary, or as otherwise provided by law.

If funds are withdrawn from a first-time home buyer savings account for any purpose other than eligible costs for the first-time purchase of a single-family residence by a qualified beneficiary, then this bill would impose a penalty equal to 10 percent of the amount so withdrawn. The account administrator would be required to withhold from the amount of the withdrawal and, on behalf of the account holder or his estate, pay 10 percent of the amount withdrawn to the Department as a penalty. No penalty would be imposed and no withdrawal from an account for ineligible costs would be added back to the account holder's federal adjusted gross income if the withdrawal is (i) by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the account by the account holder pursuant to a filing for protection under the United States Bankruptcy Code, or (iii) a transfer of the assets in such account into another first-time home buyer savings account for the benefit of another qualified beneficiary.

The Tax Commissioner would be required to develop guidelines, exempt from the provisions of the Administrative Process Act, implementing the provisions of this bill.

Virginia Income Tax Additions

To the extent excluded from federal adjusted gross income, this bill would require any funds withdrawn in the taxable year by an account holder from his first-time home buyer savings account for any purpose other than eligible costs to be added back to the account holder's federal adjusted gross income for Virginia income tax purposes. These additions would include any related penalties imposed and withheld because of the withdrawal of funds from such an account.

This bill would also require an addition to an account holder's federal adjusted gross income for any loss for the taxable year that is deducted as a capital loss for federal income tax purposes and attributable to such person's first-time home buyer savings account.

Virginia Income Tax Subtraction

This bill would allow account holders to claim a Virginia income tax subtraction for any income that is (i) taxed as a capital gain for federal income tax purposes and attributable to an increase in the value of an investment contained in his first-time home buyer savings account and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.

The effective date of this bill is not specified. The Virginia income tax additions and subtraction created under this bill would be effective for taxable years beginning on or after January 1, 2013.

cc : Secretary of Finance

Date: 1/25/2013 MTH
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