DEPARTMENT OF TAXATION
2014 Fiscal Impact Statement

1. Patron Thomas A. Greason

2. Bill Number HB 331

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

3. Committee Senate Finance

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

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

5. Summary/Purpose:

This bill would allow an individual to designate a bank account as a tax exempt first-time home buyer savings account and would allow the individual to use distributions from the account for the purpose of paying or reimbursing the down payment and allowable closing costs for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary.

All interest or other earned income attributable to an account would be excluded from the Virginia taxable income of the account holder. The amount of principal for which an account holder may claim first-time home buyer savings account status would be limited to $50,000 per account. Only cash and marketable securities would be allowed to be contributed to an account. The amount of principal and interest or other income on the principal that may be retained within an account would be limited to $150,000.

No agency or financial institution would be directly responsible for monitoring first-time home buyer savings accounts, how moneys or funds withdrawn from such accounts are used, and whether an account holder is required to remit any taxes or penalties for such accounts. Instead, account holders would be solely responsible for administering and tracking activities related to such accounts.

This bill would require an addition to an account holder's federal adjusted gross income for any loss for the taxable year that was deducted as a capital loss for federal income tax purposes by an account holder. This bill would allow an account holder to claim a subtraction for any income that is taxed as (i) a capital gain for federal income tax purposes attributable to such person's 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 that any subtraction for an account holder's income that was attributable to a first-time home buyer savings account and taxed as a capital gain or interest income for federal income tax purposes be recaptured in the taxable year or years in which moneys or funds withdrawn from an account were used for any purpose other than the payment of eligible costs.

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, 2014.

6. **Budget amendment necessary:** No.

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

8. **Fiscal implications:**

   Administrative Cost

   The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding.

   Revenue Impact

   This bill would have a minimal impact on General Fund revenues beginning in Fiscal Year 2015 and thereafter.

   According to the Virginia Association of Realtors, 99,483 single family homes, townhomes, and condos were sold in Virginia during 2013. The National Association of Realtors reported that 38 percent of home buyers that purchased a home in the United States between July of 2012 and June of 2013 were first-time home buyers. Assuming that 38 percent of the single family homes, townhomes, and condos sold in Virginia during 2013 were purchased by first-time home buyers, approximately 37,804 first-time home buyers purchased homes in Virginia during 2013.

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 allowed 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 pay 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 their 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 they file 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 will be 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 individual to designate a bank account as a tax exempt first-time home buyer savings account and would allow the individual to use distributions from the account for the purpose of paying or reimbursing the down payment and allowable closing costs for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary.

An “account holder” would be defined as 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 Virginia income tax return.

“Allowable closing costs” would be defined as a disbursement listed on a settlement statement for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary.

“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.

A “financial institution” would be defined as 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 the Commonwealth.

A "first-time home buyer savings account" or "account" would be defined as an account with a financial institution for which the account holder claims first-time home buyer savings account status on his Virginia income tax return for Taxable Year 2014 or any taxable year thereafter, for the purpose of paying or reimbursing eligible costs for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary.

A "qualified beneficiary" would be defined as an individual or individuals only who reside in the Commonwealth at the time of settlement on the purchase of a single-family residence in the Commonwealth who (i) have 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) are designated as the beneficiary of an account designated by the account holder as a first-time home buyer savings account; and (iii) may apply moneys or funds held in such account for eligible costs. A qualified beneficiary would be allowed to 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.

A "settlement statement" would be defined as 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 (RESPA), and the regulations thereunder, or an executed sales agreement for the purchase of a manufactured home being conveyed as personal property.

“Single-family residence" would be defined as a single-family residence owned and occupied by a qualified beneficiary, including a manufactured home, trailer, mobile home, condominium unit, or cooperative.

The account holder would be responsible for the use or application of moneys or funds in an account for which the account holder claims first-time home buyer savings account status. The account holder would (i) not use moneys or 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; (ii) maintain documentation of the segregation of moneys or funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence in the Commonwealth; such documentation would include the settlement statement; (iii) file, with the account holder’s Virginia income tax return, forms developed by the Department 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 (iv) remit to the Department the tax on any amounts added to individual income or recaptured for moneys or funds withdrawn from an account for any purpose other than the payment of eligible costs.

All interest or other income earned attributable to an account would be excluded from the Virginia taxable income of the account holder. The amount of principal for which an account holder would be permitted to claim first-time home buyer savings account status would be limited to $50,000 per account. Only cash and marketable securities would be allowed to be contributed to an account. The amount of principal and interest or other income on the principal that could be retained within an account would be limited to $150,000.

Financial institutions would not be required to:

- 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 or in any other way;
- Track the use of funds withdrawn from such accounts;
- Allocate funds in such accounts among joint account owners or multiple beneficiaries; or
- Report any such information to the Department or other governmental agencies.

Financial institutions would 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.

No agency or financial institution would be directly responsible for monitoring first-time home buyer savings accounts, how moneys or funds withdrawn from such accounts are used, and whether an account holder is required to remit any taxes or penalties for such accounts. Instead, account holders would be solely responsible for administering and tracking activities related to such accounts. This bill would require an account holder to maintain documentation and to file forms with the Department regarding an account, and how moneys or funds in the account were used. The Department could, therefore, discover impermissible activities with regard to an account or the moneys or funds withdrawn from an account by auditing the account holder.

Upon being furnished proof of the death of the account holder, a financial institution would be required to distribute the principal and accumulated interest or other income in the account in accordance with the terms of the contract governing the account.

If moneys or funds are withdrawn from an account for any purpose other than the payment of eligible costs, then this bill would impose a penalty calculated using the Form 1099 showing the amount of income exempted from state income tax and a five percent penalty would be assessed on the amount of exempted income. The penalty would not apply to, and there would be no recapture of income with regard to, the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the account holder pursuant to a filing for protection under the United States Bankruptcy Code, or (iii) transferred from one account to another account for the benefit of another qualified beneficiary.

Any 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 money or funds from an account would be guilty of a Class 1 misdemeanor. The punishment for committing a Class 1 misdemeanor is a jail sentence of up to 12 months and a fine of up to $2,500.

The Tax Commissioner would be required to develop guidelines, exempt from the provisions of the Administrative Process Act, implementing the provisions of this bill. Such guidelines would not apply to, or impose administrative, reporting, or other obligations or requirements on, financial institutions-related accounts for which first-time home buyer savings account status is claimed by the account holder.

Virginia Income Tax Additions

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

Virginia Income Tax Subtraction

To the extent included in federal adjusted gross income, this bill would allow any income of an account holder that was taxed as (i) a capital gain for federal income tax purposes attributable to such person's 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 to be subtracted from the account holder's federal adjusted gross income for Virginia income tax purposes.

This bill would also require that any subtraction for an account holder's income that was attributable to a first-time home buyer savings account and taxed as a capital gain or interest income for federal income tax purposes be recaptured in the taxable year or years in which moneys or funds withdrawn from an account were used for any purpose other than the payment of eligible costs. The amount of recapture would be a portion of the amount withdrawn 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 would not be required to the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, (iii) or transferred from a first-time home buyer savings account for the benefit of another qualified beneficiary.

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, 2014.

cc : Secretary of Finance

Date: 02/18/2014 MTH
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