

2023 Kansas Statutes

58-4904. Use of account moneys; withdrawals; subject to recapture, when; penalty. (a) (1) The moneys in a first-time home buyer savings account may be:

- (A) Used for eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located in this state;
- (B) used for eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located outside of this state if such designated beneficiary is active-duty military and was stationed in Kansas for any time after the creation of the account;
- (C) used for eligible expenses that would have qualified pursuant to paragraph (1)(A) or (1)(B) but the contract for purchase or construction did not close;
- (D) transferred to another newly created account; and
- (E) used to pay service fees assessed by the financial institution.

(2) This subsection shall apply even if a designated beneficiary is a joint owner of a primary residence with another person who is not a designated beneficiary of an account. Moneys in an account shall not be used to purchase a manufactured or mobile home that is not taxed as real property.

(b) Moneys withdrawn from an account shall be subject to recapture by the secretary in the tax year in which they were withdrawn if:

- (1) At the time of the withdrawal, it has been less than a year since the first deposit in the account; or
- (2) the moneys are used for any purpose other than the expenses or transactions authorized pursuant to subsection (a)(1).

(c) Moneys that are subject to recapture shall be an amount equal to the moneys withdrawn from an account and shall be added to the Kansas adjusted gross income pursuant to K.S.A. 79-32,117(b), and amendments thereto, of the account holder or, if the account holder is no longer living, the designated beneficiary. If any moneys are subject to recapture, the account holder shall pay a penalty in the following amounts:

- (1) If the withdrawal of moneys occurred 10 or less years after the first deposit in the account, 5% of the amount subject to recapture; and
- (2) if the withdrawal of moneys occurred more than 10 years after the first deposit in the account, 10% of the amount subject to recapture.

(d) The penalties provided in subsection (c) shall not apply if: (1) The withdrawn moneys are used for eligible expenses related to a designated beneficiary's purchase or construction of a primary residence outside of this state; or (2) the withdrawn moneys are from an account in which the designated beneficiary died, and the account holder did not designate a new designated beneficiary during the same tax year.

(e) If the account holder dies or, if the account is jointly owned and the account owners die, and the account does not have a surviving payable on death beneficiary, then all of the moneys in the account resulting from contributions or income earned from assets in the account pursuant to K.S.A. 79-32,117, and amendments thereto, shall be subject to recapture in the tax year of the death or deaths, but no penalty shall be assessed pursuant to subsection (c).

History: L. 2021, ch. 102, § 4; L. 2023, ch. 5, § 3; July 1.