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September 1, 2023

ATTORNEY GENERAL OPINION NO. 2023-7

The Honorable Steven Johnson
Kansas State Treasurer
900 SW Jackson St., Ste. 201,
Topeka, KS 66612-1235

Re: Personal and Real Property—First-Time Home Buyers Savings
Account Act—Individual Savings Account

Synopsis: A certificate of deposit qualifies as an individual savings account that may be designated as a first-time home buyers savings account under K.S.A. 58-4903. Although neither a savings account nor a certificate of deposit is defined by the statute, other sources shows a savings account is commonly understood to include a certificate of deposit. Cited herein: K.S.A. 58-4902; K.S.A 58-4903.

* * *

Dear Treasurer Johnson:

As the Kansas State Treasurer, you ask whether K.S.A. 58-4903 permits a certificate of deposit (CD) with a financial institution qualified to do business in the State of Kansas to be used as a first-time home buyer savings account. Kansas statutes do not define CDs. But, review of caselaw and evidence of common usage reveals that they are ordinarily understood to be a type of savings account, thus permitting their use as a first-time home buyer savings account.

To answer your question, we must construe K.S.A. 58-4902 and K.S.A. 58-4903. Statutory interpretation begins with the statutory text, giving words their ordinary,

everyday meanings. Only when the statutory language is ambiguous do we turn to the tools of statutory interpretation or consider legislative history.¹

K.S.A. 58-4903(a) permits an individual to “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 designated beneficiary’s eligible expenses for the purchase or construction of a primary residence in this state.” Starting July 1, 2023, the Legislature gave the State Treasurer non-exclusive authority to market the first-time home buyers savings account program to account holders and financial institutions throughout the state.²

“Account” or “first-time home buyer savings account” is defined by the statute as “an individual savings account established in accordance with the provisions of this act.”³

The Act does not define “savings account,” nor specify the type of accounts it entails. Thus, the statutory language does not answer the question of whether CDs qualify as individual savings accounts. We must look for the answer outside of the statutory text.

Turning to the dictionary, a savings account is defined as: “an account (as in a bank) on which interest is usu[ally] paid and from which withdrawals can be made usu[ally] only by presentation of a passbook or by written authorization on a prescribed form.”⁴ A certificate of deposit is “a money-market bond of a preset face value paying fixed interest and redeemable without penalty only on maturity.”⁵ Though the definition of a CD does not mention a savings account, it does define a CD as paying a fixed interest rate, which is also a quality of a savings account.

We can also look to how various entities that handle savings accounts represent CDs to the public for clues as to the ordinary, public meaning of a CD. Various federal agencies on their public websites define a CD as a type of savings account.⁶

¹ *Bruce v. Kelly*, 316 Kan. 218, 224, 514 P.3d 1007 (2022).

² K.S.A. Ch. 5, § 1.

³ K.S.A. 58-4902(a).

⁴ *Savings Account*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2003); *see also Savings Account*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A savings-bank depositor’s account usu[ally] bearing interest or containing conditions (such as advance notice) to the right of withdrawal.”).

⁵ *Certificate of Deposit*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY, *supra*; *see also Certificate of Deposit*, BLACK’S LAW DICTIONARY, *supra* (“A banker’s certificate acknowledging the receipt of money and promising to repay the debtor.”).

⁶ *See, e.g., Q: What are Certificates of Deposit (CDs)?*, FEDERAL DEPOSIT INSURANCE CORPORATION, <https://perma.cc/VT24-EAKW> (last visited September 1, 2023) (“Certificates of Deposit (CDs) are savings certificates where the money you put into them are invested by a bank for a set period of time—you can typically choose between one month and five years—and the bank gives you the money back with interest.”); *Certificate of Deposit*, SECURITIES EXCHANGE COMMISSION <https://perma.cc/6MR7-R3DP> (last visited September 1, 2023) (“A certificate of deposit (CD) is a savings account that holds a fixed amount of money for a fixed period of time, such as six months,

Additionally, Bank of America refers to a CD as “a low-risk savings tool” that is like a savings account in that it is insured by the FDIC and earns compound interest.⁷ Finally, another personal finance company explains a CD “is a type of savings account with a fixed time period and interest rate.”⁸

Finally, caselaw provides some help. Though no Kansas cases address the meaning of “savings account” or of “certificate of deposit,” the Texas Court of Appeals has examined the issue. Noting the similarities between regular savings accounts and CDs, that court determined: “It would be inappropriate to conclude that money deposited in a bank, placed there for ‘saving’ in an account or certificate, is not a savings account or savings certificate because it is termed a certificate of deposit or money market account.”⁹ Thus, the court held: “It is illogical to preclude an account or certificate from being a savings account or savings certificate merely because the typical certificate of deposit or money market account requires the depositor to pay a penalty for early withdrawal” because the restrictions placed on CDs are to encourage depositors to do what CDs were designed to do—save money.¹⁰

These definitions show that CDs are commonly understood to be a type of savings account. In the absence of any statutory definition, this common understanding should control the meaning of a CD and an individual savings account.

In light of the Legislature’s decision not to define “individual savings account,” and given the common understanding of this term, we conclude that your belief is correct—CDs purchased in a qualified financial institution and designated for the purpose of a down payment for a first-time home buyer would qualify, subject to the limits set forth in K.S.A. 2022 Supp. 58-4903(c).

one year, or five years, and in exchange, the issuing bank pays interest.”); *What is a certificate of deposit (CD)?*, CONSUMER FINANCIAL PROTECTION BUREAU <https://perma.cc/Z9CV-L5VC> (last visited September 1, 2023) (“A certificate of deposit, or CD, is a type of savings account offered by banks and credit unions. You generally agree to keep your money in the CD without taking a withdrawal for a specified length of time. Withdrawing money early means paying a penalty fee to the bank.”).

⁷ *What is a CD and how do they work?*, BANK OF AMERICA, <https://perma.cc/Z3FE-ZSRM> (last visited September 1, 2023).

⁸ *What is a CD (Certificate of Deposit)?*, NERDWALLET <https://perma.cc/6ZV8-RD8D> (last visited September 1, 2023).

⁹ *Sammons v. Elder*, 940 S.W.2d 276, 282 (Tex. Ct. App. 1997); *see also Estate of O’Connell v. Arnold*, 105 Cal. Rptr. 590, 593 (Ct. App. 1972) (“Like most laymen, the testatrix apparently looked on her savings on deposit with the Wells Fargo Bank as indistinguishable, whether represented by the savings pass book or the certificate of deposit.”).

¹⁰ 940 S.W.2d at 282.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Kansas Attorney General

/s/ Ryan J. Ott

Ryan J. Ott
Assistant Solicitor General