

5835

2013-2014 Regular Sessions

I N S E N A T E

June 17, 2013

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, in relation to capital awards to certain vendor tracks and disposition of revenues

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Clause (H) of subparagraph (ii) of paragraph 1 of subdivi-
2 sion b of section 1612 of the tax law, as amended by chapter 454 of the
3 laws of 2012, is amended to read as follows:
4 (H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of
5 this subparagraph, the track operator of a vendor track shall be eligi-
6 ble for a vendor's capital award of up to four percent of the total
7 revenue wagered at the vendor track after payout for prizes pursuant to
8 this chapter, which shall be used exclusively for capital project
9 investments to improve the facilities of the vendor track which promote
10 or encourage increased attendance at the video lottery gaming facility
11 including, but not limited to hotels, other lodging facilities, enter-
12 tainment facilities, retail facilities, dining facilities, events
13 arenas, parking garages and other improvements that enhance facility
14 amenities; provided that such capital investments shall be approved by
15 the division, in consultation with the state racing and wagering board,
16 and that such vendor track demonstrates that such capital expenditures
17 will increase patronage at such vendor track's facilities and increase
18 the amount of revenue generated to support state education programs. The
19 annual amount of such vendor's capital awards that a vendor track shall
20 be eligible to receive shall be limited to two million five hundred
21 thousand dollars, except for Aqueduct racetrack, for which there shall
22 be no vendor's capital awards. Except for tracks having less than one
23 thousand one hundred video gaming machines AND TRACKS LOCATED IN ONTARIO
24 AND GENESEE COUNTIES, each track operator shall be required to co-invest
25 an amount of capital expenditure equal to its cumulative vendor's capi-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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tal award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen shall be eligible to receive the vendor's capital award; AND PROVIDED FURTHER, THAT ANY AMOUNT ATTRIBUTABLE TO A CAPITAL EXPENDITURE AT A TRACK LOCATED IN ONTARIO, GENESEE OR ERIE COUNTY APPROVED PRIOR TO APRIL FIRST, TWO THOUSAND EIGHTEEN AND COMPLETED BEFORE APRIL FIRST, TWO THOUSAND TWENTY SHALL BE ELIGIBLE TO RECEIVE THE VENDOR'S CAPITAL AWARD. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

S 2. Subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law is amended by adding two new clauses (J) and (K) to read as follows:

(J) NOTWITHSTANDING CLAUSES (A), (B), (C), (D) AND (E) OF THIS SUBPARAGRAPH, WHEN A VENDOR TRACK IS LOCATED WITHIN ONTARIO, GENESEE OR ERIE COUNTIES, AT A RATE SEVEN AND ONE-HALF (7.5) PERCENTAGE POINTS GREATER THAN THE PERCENTAGE OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK WHICH WOULD OTHERWISE BE APPLICABLE AND PAYABLE UNDER CLAUSE (A), (B), (C), (D), OR (E) OF THIS SUBPARAGRAPH.

(K) NOTWITHSTANDING CLAUSES (A), (B), (C), (D), (E) AND (J) OF THIS SUBPARAGRAPH, WHEN A VENDOR TRACK IS LOCATED WITHIN ONTARIO OR GENESEE COUNTIES, EFFECTIVE ON THE DATE THAT A NATIVE AMERICAN CASINO OPENS TO THE GENERAL PUBLIC IN ANY OF MONROE, ORLEANS, GENESEE, LIVINGSTON, ONTARIO OR WAYNE COUNTIES, AT A RATE TEN PERCENTAGE POINTS GREATER THAN THE PERCENTAGE OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK WHICH WOULD OTHERWISE BE APPLICABLE AND PAYABLE UNDER CLAUSE (A), (B), (C), (D), OR (E) OF THIS SUBPARAGRAPH.

S 3. Subparagraph (iii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 1 of part O-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(iii) less an additional vendor's marketing allowance AT THE FIXED RATE OF TEN PERCENT OF THE TOTAL REVENUE WAGERED AT A VENDOR TRACK IN ONTARIO, GENESEE AND ERIE COUNTIES AFTER PAYOUT FOR PRIZES, AND FOR ALL OTHER VENDOR TRACKS at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs

1 of its video lottery gaming operations and pari-mutuel horse racing
2 operations, as long as any such costs associated with pari-mutuel horse
3 racing operations simultaneously encourage increased attendance at such
4 vendor's video lottery gaming facilities, consistent with the customary
5 manner of marketing comparable operations in the industry and subject to
6 the overall supervision of the division; provided, however, that the
7 additional vendor's marketing allowance shall not exceed eight percent
8 in any year for any operator of a racetrack located in the county of
9 Westchester or Queens; provided, however, a vendor track that receives a
10 vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph
11 shall not receive the additional vendor's marketing allowance. In estab-
12 lishing the vendor fee, the division shall ensure the maximum lottery
13 support for education while also ensuring the effective implementation
14 of section sixteen hundred seventeen-a of this article through the
15 provision of reasonable reimbursements and compensation to vendor tracks
16 for participation in such program. Within twenty days after any award of
17 lottery prizes, the division shall pay into the state treasury, to the
18 credit of the state lottery fund, the balance of all moneys received
19 from the sale of all tickets for the lottery in which such prizes were
20 awarded remaining after provision for the payment of prizes as herein
21 provided. Any revenues derived from the sale of advertising on lottery
22 tickets shall be deposited in the state lottery fund.

23 S 4. Paragraph 3 of subdivision f of section 1617-a of the tax law, as
24 added by section 2 of part 0 of chapter 61 of the laws of 2011, is
25 amended to read as follows:

26 (3) For each video lottery facility, the annual value of the free play
27 allowance credits authorized for use by the operator pursuant to this
28 subdivision shall not exceed an amount equal to ten percent of the total
29 amount wagered on video lottery games after payout of prizes; PROVIDED
30 HOWEVER, THAT THE FREE PLAY ALLOWANCE CREDITS AUTHORIZED FOR USE BY AN
31 OPERATOR IN ONTARIO, GENESEE AND ERIE COUNTIES SHALL NOT EXCEED AN
32 AMOUNT EQUAL TO FIFTEEN PERCENT OF THE TOTAL AMOUNT WAGERED ON VIDEO
33 LOTTERY GAMES AFTER THE PAYOUT OF PRIZES. The division shall establish
34 procedures to assure that free play allowance credits do not exceed such
35 amount.

36 S 5. The division of the lottery is authorized and directed to reim-
37 burse to any vendor track located within the geographic area set forth
38 in paragraph 12(a)(1) of the Nation-State Gaming Compact between the
39 Seneca Nation of Indians and the State of New York executed on August
40 18, 2002, as amended, the full amount of all documented expenses
41 incurred by such vendor track in removing any use of the word "casino"
42 or "slot machine" from their signage, Internet websites, marketing piec-
43 es and other promotional material, and adopting new alternative business
44 trademarks, trade names and logos which do not make use of the word
45 "casino" or "slot machine".

46 S 6. This act shall take effect immediately.