STATE OF NEW YORK

8517

2017-2018 Regular Sessions

IN ASSEMBLY

June 18, 2017

Introduced by M. of A. BRINDISI, PRETLOW -- read once and referred to the Committee on Racing and Wagering

AN ACT to amend the tax law, in relation to requiring a written agreement for flexibility of operating funds for certain video lottery gaming facilities; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph (i) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by chapter 174 of the laws of 2013, is amended to read as follows:

(i) less ten percent of the total revenue wagered after payout for prizes to be retained by the division for operation, administration, and procurement purposes*; provided, however, in the case of a vendor track located within Oneida county and within fifteen miles of a Native American class III gaming facility, seven percent of the total revenue wagered after payout for prizes shall be retained by the division for operation, administration, and procurement purposes and the remaining three percent of the total revenue wagered after payout for prizes, or any portion thereof, may be used by such vendor track for operating purposes, pursuant to a written agreement with the gaming commission that requires such vendor track to remain open and operational for a period of three years from the enactment of the chapter of the laws of two thousand seventeen that amended this subparagraph*;

§ 2. Clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 1 of part QQ of chapter 59 of the laws of 2017, is amended to read as follows:

(H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of this subparagraph, the track operator of a vendor track and in the case of Aqueduct, the video lottery terminal facility operator, shall be eligible for a vendor's capital award of up to four percent of the total

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

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revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs; provided, however, a vendor track located within Oneida county and within fifteen miles of a Native American class III gaming facility may use the total amount of vendor's capital awards that it shall be eligible to receive, or any portion thereof, for operating purposes, pursuant to a written agreement with the gaming commission that requires such vendor track to remain open and operational for a period of three years from the enactment of the chapter of the laws of two thousand seventeen that amended this clause. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no annual limit, provided, however, that any such capital award for the Aqueduct video lottery terminal facility operator shall be one percent of the total revenue wagered at the video lottery terminal facility after payout for prizes pursuant to this chapter until the earlier of the designation of one thousand video lottery devices as hosted pursuant to paragraph four of subdivision a of section sixteen hundred seventeen-a of this chapter or April first, two thousand nineteen and shall then be four percent of the total revenue wagered at the video lottery terminal facility after payout for prizes pursuant to this chapter, provided, further, that such capital award shall only be provided pursuant to an agreement with the operator to construct an expansion of the facility, hotel, and convention and exhibition space requiring a minimum capital investment of three hundred million dollars. Except for tracks having less than one thousand one hundred video gaming machines, and except for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York, and except for Aqueduct racetrack each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital 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 eighteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand eighteen and completed before April first, two thousand twenty; or approved prior to April first, two thousand twenty-two and completed before April first, two thousand twenty-four for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York, 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 eighteen and completed prior to April first, two thousand twenty, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand eighteen, the vendor shall continue to receive the capital award after April first, two thousand eighteen 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 eighteen shall be deposited into the state lottery fund for education aid; and

§ 3. Section 1617-a of the tax law is amended by adding a new subdivision l to read as follows:

l. The operator of a video lottery gaming facility located in Oneida county and located within fifteen miles of a Native American class III gaming facility shall enter into a written agreement with the gaming commission that requires such facility to remain open and operational for a period of three years from the enactment of the chapter of the laws of two thousand seventeen that added this subdivision. Such operator shall annually report on all gross and net revenues and all operating expenses for both the video lottery gaming facility and racetrack, including, but not limited to, a detailed summary and description of the revenues and expenses related to racing, gaming, food and beverage sales, hotel sales, payroll, marketing, taxes, and all other direct and indirect costs and sales. Such report shall be submitted to the gaming commission, the governor, the temporary president of the senate, and the speaker of the assembly within thirty days of the conclusion of the state fiscal year.

§ 4. This act shall take effect immediately and shall expire and be deemed repealed June 30, 2020.