

STATE OF NEW YORK

8468

2021-2022 Regular Sessions

IN ASSEMBLY

November 17, 2021

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law and the state finance law, in relation to the investment of funds wagered on video lottery gaming for certain horse races; and to repeal paragraph b of subdivision 1 of section 1355 of the racing, pari-mutuel wagering and breeding law relating thereto

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

Section 1. Subdivision f of section 1612 of the tax law, as amended by chapter 174 of the laws of 2013, paragraph 1 as amended by section 2 of part 00 of chapter 59 of the laws of 2014 and paragraph 3 as amended by section 2 of part V of chapter 59 of the laws of 2020, is amended to read as follows:

f. As consideration for the operation of the video lottery gaming facility at Aqueduct racetrack, the division shall cause the investment in the state of New York and the racing industry of the following percentages of the vendor fee to be deposited or paid, as follows:

1. Six and one-half percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, seven percent of the total wagered after payout of prizes for the second year of operation, and seven and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for the purpose of [~~enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. One percent of the gross purse enhancement amount, as required by this subdivision, shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned on a pro rata basis in accordance with the amounts originally contributed and shall be used for the purpose of enhancing purses at~~]

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

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~~such tracks~~ funding the state of New York, shall be deposited into the video lottery gaming revenue fund, established pursuant to section ninety-nine-oo of the state finance law. One and one-half percent of the ~~[gross purse enhancement]~~ amount required to be deposited in the fund established pursuant to section ninety-nine-oo of the state finance law, as required by this subdivision, shall be paid to an account established pursuant to section two hundred twenty-one-a of the racing, pari-mutuel wagering and breeding law to be used exclusively to provide health insurance for jockeys.

2. ~~[One]~~ Eight and one-half percent of the total wagered after payout of prizes ~~[for the first year of operation of video lottery gaming at Aqueduct racetrack, one and one quarter percent of the total wagered after payout of prizes for the second year of operation, and one and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for an appropriate breeding fund for the manner of racing conducted at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course]~~ to be deposited into the video lottery gaming revenue fund, established pursuant to section ninety-nine-oo of the state finance law, for the purpose of funding the state of New York.

3. ~~[Four percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. Capital expenditures may include funding the construction of and initially equipping a state-based equine drug testing and research laboratory to be used pursuant to subdivision seven of section nine hundred two of the racing, pari-mutuel wagering and breeding law.~~

4. ~~Three percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.~~

5.] Paragraphs one[7] and two[~~7, three and four~~] of this subdivision shall be known collectively as the "[~~racing~~] video lottery gaming support payments".

§ 2. Paragraph 1-b of subdivision b of section 1612 of the tax law, as added by section 2 of part EE of chapter 59 of the laws of 2019, is amended to read as follows:

1-b. Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision i of section sixteen hundred seventeen-a of this article shall not be included in the calculation of the total amount wagered on video lottery games, the total amount wagered after payout of prizes, the vendor fees payable to the operators of video lottery gaming facilities, fees payable to the division's video lottery gaming equipment contractors, [~~or~~] racing support payments, or video lottery gaming support payments.

§ 3. Subdivision f-1 of section 1612 of the tax law, as amended by chapter 175 of the laws of 2013, is amended to read as follows:

f-1. As consideration for operation of video lottery gaming facility located in the county of Nassau or Suffolk and operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, the division shall cause the [~~investment~~

1 ~~in the racing industry of the~~ following percentages of the vendor fee
2 to be deposited or paid as follows:

3 ~~[1. Two and three tenths]~~ Five percent of the total wagered after
4 payout of prizes ~~[for the purpose of enhancing purses at Aqueduct race-~~
5 ~~track, Belmont Park racetrack and Saratoga race course, provided, howev-~~
6 ~~er, that any amount that is in excess of the amount necessary to main-~~
7 ~~tain purse support from video lottery gaming at Aqueduct racetrack,~~
8 ~~Belmont Park racetrack and Saratoga race course at the same level real-~~
9 ~~ized in two thousand thirteen, to be adjusted by the consumer price~~
10 ~~index for all urban consumers, as published annually by the United~~
11 ~~States department of labor, bureau of labor statistics, shall instead be~~
12 ~~returned to the commission]~~ shall be deposited into the video lottery
13 gaming revenue fund, established pursuant to section ninety-nine-00 of
14 the state finance law for the purpose of funding the state of New York.

15 ~~[2. five tenths percent of the total wagered after payout of prizes~~
16 ~~for the appropriate breeding fund for the manner of racing at Aqueduct~~
17 ~~racetrack, Belmont Park racetrack and Saratoga race course, provided,~~
18 ~~however, that any amount that is in excess of the amount necessary to~~
19 ~~maintain payments from video lottery gaming at Aqueduct racetrack at the~~
20 ~~same level realized in two thousand thirteen, to be adjusted by the~~
21 ~~consumer price index for all urban consumers, as published annually by~~
22 ~~the United States department of labor, bureau of labor statistics, shall~~
23 ~~instead be returned to the commission.~~

24 ~~3. one and three tenths percent of the total revenue wagered after~~
25 ~~payout of prizes to be deposited into an account of the franchised~~
26 ~~corporation established pursuant to section two hundred six of the~~
27 ~~racing, pari-mutuel wagering and breeding law to be used for capital~~
28 ~~expenditures in maintaining and upgrading Aqueduct racetrack, Belmont~~
29 ~~Park racetrack and Saratoga race course, provided, however, that any~~
30 ~~amount that is in excess of the amount necessary to maintain payments~~
31 ~~for capital expenditures from video lottery gaming at Aqueduct racetrack~~
32 ~~at the same level realized in two thousand thirteen, to be adjusted by~~
33 ~~the consumer price index for all urban consumers, as published annually~~
34 ~~by the United States department of labor, bureau of labor statistics,~~
35 ~~shall instead be returned to the commission.~~

36 ~~4. Nine tenths percent of the total revenue wagered after payout for~~
37 ~~prizes to be deposited into an account of the franchised corporation~~
38 ~~established pursuant to section two hundred six of the racing, pari-mu-~~
39 ~~tuel wagering and breeding law to be used for general thoroughbred~~
40 ~~racing operations at Aqueduct racetrack, Belmont Park racetrack and~~
41 ~~Saratoga race course, provided, however, that any amount that is in~~
42 ~~excess of the amount necessary to maintain payments for general~~
43 ~~thoroughbred racing operations from video lottery gaming at Aqueduct~~
44 ~~racetrack at the same level realized in two thousand thirteen, to be~~
45 ~~adjusted by the consumer price index for all urban consumers, as~~
46 ~~published annually by the United States department of labor, bureau of~~
47 ~~labor statistics, shall instead be returned to the commission.]~~

48 § 4. The opening paragraph of paragraph 2 of subdivision b of section
49 1612 of the tax law, as amended by section 2 of part S of chapter 39 of
50 the laws of 2019, is amended to read as follows:

51 As consideration for the operation of a video lottery gaming facility,
52 the division, shall cause the investment in the racing industry and the
53 state of New York of a portion of the vendor fee received pursuant to
54 paragraph one of this subdivision in the manner set forth in this subdivi-
55 sion. With the exception of Aqueduct racetrack, a video lottery
56 gaming facility authorized pursuant to paragraph five of subdivision a

1 of section sixteen hundred seventeen-a of this article or a facility in
2 the county of Nassau or Suffolk operated by a corporation established
3 pursuant to section five hundred two of the racing, pari-mutuel wagering
4 and breeding law, each such track shall dedicate a portion of its vendor
5 fees, received pursuant to clause (A), (B), (B-1), (B-2), (C), or (D) of
6 subparagraph (ii) of paragraph one of this subdivision, for the purpose
7 of ~~[enhancing purses at such track]~~ funding the state of New York, in an
8 amount equal to eight and three-quarters percent of the total revenue
9 wagered at the vendor track after pay out for prizes. ~~[One percent of~~
10 ~~the gross purse enhancement amount, as required by this subdivision,~~
11 ~~shall be paid to the gaming commission to be used exclusively to promote~~
12 ~~and ensure equine health and safety in New York. Any portion of such~~
13 ~~funding to the gaming commission unused during a fiscal year shall be~~
14 ~~returned to the video lottery gaming operators on a pro rata basis in~~
15 ~~accordance with the amounts originally contributed by each operator and~~
16 ~~shall be used for the purpose of enhancing purses at such track]~~ Such
17 funds shall be deposited into the video lottery gaming revenue fund,
18 established pursuant to section ninety-nine-00 of the state finance law.
19 One and one-half percent of the ~~[gross purse enhancement amount at a~~
20 ~~thoroughbred track]~~ amount paid to the video lottery gaming revenue
21 fund, as required by this subdivision, shall be paid to an account
22 established pursuant to section two hundred twenty-one-a of the racing,
23 pari-mutuel wagering and breeding law to be used exclusively to provide
24 health insurance for jockeys. In addition, with the exception of Aque-
25 duct racetrack, a video lottery gaming facility authorized pursuant to
26 paragraph five of subdivision a of section sixteen hundred seventeen-a
27 of this article or a facility in the county of Nassau or Suffolk oper-
28 ated by a corporation established pursuant to section five hundred two
29 of the racing, pari-mutuel wagering and breeding law, one and one-quar-
30 ter percent of total revenue wagered at the vendor track after pay out
31 for prizes, received pursuant to clause (A), (B), (B-1), (B-2), (C), or
32 (D) of subparagraph (ii) of paragraph one of this subdivision, shall be
33 distributed to the ~~[appropriate breeding]~~ video lottery gaming revenue
34 fund ~~[for the manner of racing conducted by such track]~~, established
35 pursuant to section ninety-nine-00 of the state finance law.

36 § 5. Subdivision h of section 1612 of the tax law, as amended by
37 section 3 of part S of chapter 39 of the laws of 2019, is amended to
38 read as follows:

39 h. As consideration for the operation of a video lottery gaming facil-
40 ity located in Orange county, the division shall cause the investment in
41 the ~~[racing industry]~~ state of New York at the following amount from the
42 vendor fee to be paid as follows:

43 ~~[As amount to the horsemen for purses at a licensed racetrack in~~
44 ~~Sullivan county in an]~~ An amount equal to eight and three-quarters
45 percent of the total revenue wagered at the video lottery gaming facili-
46 ty, after pay out for prizes to be paid to the video lottery gaming
47 revenue fund, established pursuant to section ninety-nine-00 of the
48 state finance law. ~~[The facility located in Orange county, as defined in~~
49 ~~paragraph five of subdivision a of section sixteen hundred seventeen-a~~
50 ~~of this article shall pay to the horsemen at a licensed racetrack at~~
51 ~~Yonkers racetrack an amount to maintain purses for such horsemen at the~~
52 ~~same dollar levels realized in two thousand eighteen, to be adjusted by~~
53 ~~the consumer price index for all urban consumers, as published annually~~
54 ~~by the United States department of labor bureau of labor statistics.]~~ In
55 addition, one and one-quarter percent of total revenue wagered at the
56 video lottery gaming facility after pay out for prizes, received pursu-

ant to clause (B) of subparagraph (ii) of paragraph one of subdivision b of this section, shall be distributed to the [~~appropriate breeding~~ video lottery gaming revenue fund [~~for the manner of racing conducted by such track~~], established pursuant to section ninety-nine-oo of the state finance law. In no circumstance shall net proceeds of the lottery, including the proceeds from video lottery gaming, be used for the payment of non-lottery expenses of the gaming commission, administrative or otherwise.

§ 6. The state finance law is amended by adding two new sections 99-oo and 99-pp to read as follows:

§ 99-oo. Video lottery gaming revenue fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "video lottery gaming revenue fund".

2. Such fund shall consist of all revenues received pursuant to the provisions of section one thousand six hundred twelve of the tax law and all other moneys credited or transferred thereto from any other fund or source pursuant to law. Nothing contained in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. The moneys in such fund shall be disbursed to the state lottery fund, the general fund, and an additional sub-fund created within the video lottery gaming revenue fund known as the video lottery gaming revenue community reinvestment fund, as follows:

(a) forty percent shall be deposited in the state lottery fund for additional lottery grants to eligible school districts, including schools serving students with disabilities and schools with preschool special education programs;

(b) twenty-five percent shall be deposited in the state lottery fund to be allocated to the human services sector;

(c) five percent shall be deposited in the state lottery fund to be allocated to the department of labor worker protection fund; and

(d) thirty percent shall be deposited in the video lottery gaming revenue community reinvestment fund established by section ninety-nine-pp of this article.

§ 99-pp. Video lottery gaming revenue community reinvestment fund. 1. There is hereby established in the joint custody of the state comptroller and commissioner of taxation and finance a special fund to be known as the "video lottery gaming revenue fund".

2. Such fund shall consist of revenues received pursuant to the provisions of section ninety-nine-oo of this article and all other moneys credited or transferred thereto from any other fund or source pursuant to law. Nothing contained in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. The moneys received by such fund shall be expended to the commissioner of agriculture and disbursed, in consultation with the president and chief executive officer of the empire state development corporation to be spent on agricultural grants, funding for horse care and the adoption of race horses, and economic development in communities where horse racing occurs.

4. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of agriculture.

§ 7. Paragraph 5 of subdivision a of section 1617-a of the tax law, as added by section 4 of part S of chapter 39 of the laws of 2019, is amended to read as follows:

(5) At a facility located in Orange county to be operated by the entity otherwise licensed to operate video lottery gaming at Monticello racetrack, provided that: (i) such licensed entity is no longer operating video lottery gaming at Monticello racetrack [~~and provided that Monticello racetrack is conducting racing operations~~]; (ii) such facility in Orange county is not sited within a thirty mile radius of the video lottery gaming facility at Yonkers racetrack; and (iii) the licensed entity, its subsidiaries and affiliates, including the entity licensed to operate a commercial gaming facility in Sullivan county, and the entity licensed to operate video lottery gaming at Yonkers racetrack enter into a mitigation agreement, to be approved by the gaming commission, which shall include, but not be limited to, terms that require: (A) the operator of the facility in Orange county to make an annual payment to the entity licensed to operate video lottery gaming or commercial gaming at Yonkers racetrack to account for the effects that siting such facility in Orange county would likely have on the gross gaming revenue of the entity licensed to operate at Yonkers racetrack; (B) employment levels at the affected facilities; and (C) that upon expiration or termination of the agreement, the authority to operate video lottery gaming in Orange county shall cease. Notwithstanding any other provision of this subdivision, at no time shall an entity operating video lottery gaming in Orange county be permitted to apply for or receive a license to operate a commercial gaming facility in that county.

§ 8. Paragraph (b) of subdivision 1 of section 1355 of the racing, pari-mutuel wagering and breeding law is REPEALED.

§ 9. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 10. This act shall take effect immediately.