

S T A T E O F N E W Y O R K

8767--A

2009-2010 Regular Sessions

I N A S S E M B L Y

June 5, 2009

Introduced by M. of A. GUNTHER, PRETLOW -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to a qualified capital investment at no more than one vendor track in Sullivan county

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

1 Section 1. Clause (G) of subparagraph (ii) of paragraph 1 of subdivi-
2 sion b of section 1612 of the tax law, as amended by section 1 of part
3 0-1 of chapter 57 of the laws of 2009, is amended to read as follows:
4 (G) notwithstanding any other provisions of this section, when [a
5 relocated] NO MORE THAN ONE vendor track LOCATED IN THE TOWN OF THOMPSON
6 IN SULLIVAN COUNTY AT THE SITE OF THE FORMER CONCORD RESORT at which a
7 qualified capital investment has been made and no fewer than [two] ONE
8 thousand full-time, permanent employees have been newly hired, is
9 located in Sullivan county and is within sixty miles from any gaming
10 facility in a contiguous state, then for a period of forty years the
11 division shall pay into the state treasury, to the credit of the state
12 lottery fund created by section ninety-two-c of the state finance law
13 the greater of (i) twenty-five percent of total revenue after payout for
14 prizes for "video lottery games" or (ii) for the first eight years of
15 operation thirty-eight million dollars, and beginning in the ninth year
16 of operation such amount shall increase annually by the lesser of the
17 increase in the consumer price index or two percent plus the division
18 shall retain an amount equal to all actual expenses related to oper-
19 ations, administration and procurement of the video lottery terminal
20 operation at [the relocated] NO MORE THAN ONE vendor track LOCATED IN
21 THE TOWN OF THOMPSON IN SULLIVAN COUNTY AT THE SITE OF THE FORMER
22 CONCORD RESORT, provided, however, such amount retained by the division
23 shall not exceed seven percent of total revenue after payout of prizes.
24 In addition, in the event the division makes a payment pursuant to

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

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1 subclause (i) of this clause, the division shall pay to the credit of
2 the state lottery fund created by section ninety-two-c of the state
3 finance law 11.11 percent of the amount by which total revenue after
4 payout for prizes exceeds two hundred fifteen million dollars, but in no
5 event shall such payment exceed five million dollars.

6 The balance shall be paid as a vendor's fee to the track operator of
7 [the relocated] NO MORE THAN ONE vendor track LOCATED IN THE TOWN OF
8 THOMPSON IN SULLIVAN COUNTY AT THE SITE OF THE FORMER CONCORD RESORT for
9 serving as a lottery agent under this chapter.

10 Provided, however, that in the case of [a relocated] NO MORE THAN ONE
11 vendor track LOCATED IN THE TOWN OF THOMPSON IN SULLIVAN COUNTY AT THE
12 SITE OF THE FORMER CONCORD RESORT with a qualified capital investment,
13 AND ONE THOUSAND FULL-TIME, PERMANENT EMPLOYEES AS OF JULY FIRST, TWO
14 THOUSAND ELEVEN if at any time after [July first, two thousand ten]
15 THREE YEARS OF OPENING OPERATIONS OF THE LICENSED VIDEO GAMING FACILITY
16 OR LICENSED VENDOR TRACK, the vendor track experiences an employment
17 shortfall, then the recapture amount shall apply, for only such period
18 as the shortfall exists.

19 For the purposes of this section "qualified capital investment" shall
20 mean an investment of a minimum of [one billion] SIX HUNDRED MILLION
21 dollars as reflected by audited financial statements of which not less
22 than three hundred million dollars shall be comprised of equity and/or
23 mezzanine financing as an initial investment in a county where twelve
24 percent of the population is below the federal poverty level as measured
25 by the most recent Bureau of Census Statistics prior to the qualified
26 capital investment commencing that results in the construction, develop-
27 ment or improvement of at least one eighteen hole golf course, and the
28 construction and issuance of certificates of occupancy for hotels, lodg-
29 ing, [convention centers,] spas, dining, retail and entertainment
30 venues, parking garages and other capital improvements at or adjacent to
31 the licensed video gaming facility or licensed vendor track which
32 promote or encourage increased attendance at such facilities.

33 For the purposes of this section, "full-time, permanent employee"
34 shall mean an employee who has worked at the VIDEO GAMING FACILITY,
35 vendor track or related and adjacent facilities for a minimum of thir-
36 ty-five hours per week for not less than four consecutive weeks and who
37 is entitled to receive the usual and customary fringe benefits extended
38 to other employees with comparable rank and duties; or two part-time
39 employees who have worked at the VIDEO GAMING FACILITY, vendor track or
40 related and adjacent facilities for a combined minimum of thirty-five
41 hours per week for not less than four consecutive weeks and who are
42 entitled to receive the usual and customary fringe benefits extended to
43 other employees with comparable rank and duties.

44 For the purpose of this section "employment goal" shall mean [two] ONE
45 thousand FIVE HUNDRED full-time permanent employees AFTER THREE YEARS OF
46 OPENING OPERATIONS OF THE LICENSED VIDEO GAMING FACILITY OR LICENSED
47 VENDOR TRACK.

48 For the purpose of this section "employment shortfall" shall mean a
49 level of employment that falls below the employment goal, as certified
50 annually by vendor's certified accountants and the chairman of the
51 empire state development corporation.

52 For the purposes of this section "recapture amount" shall mean the
53 difference between the amount of the vendor's fee paid to a vendor track
54 with a qualified capital investment, and the vendor fee otherwise paya-
55 ble to a vendor track pursuant to clause (F) of this subparagraph, that
56 is reimbursable by the vendor track to the division for payment into the

1 state treasury, to the credit of the state lottery fund created by
2 section ninety-two-c of the state finance law, due to an employment
3 shortfall pursuant to the following schedule only for the period of the
4 employment shortfall:
5 (i) [sixty-six] ONE HUNDRED percent of the recapture amount if the
6 employment shortfall is greater than [fifty] SIXTY-SIX AND TWO-THIRDS
7 percent of the employment goal;
8 (ii) [sixty] SEVENTY-FIVE percent of the recapture amount if the
9 employment shortfall is greater than [forty] THIRTY-THREE AND ONE-THIRD
10 percent of the employment goal;
11 (iii) [forty-five] FORTY-NINE AND ONE-HALF percent of the recapture
12 amount if the employment shortfall is greater than thirty percent of the
13 employment goal;
14 (iv) [twenty] TWENTY-TWO percent of the recapture amount if the
15 employment shortfall is greater than twenty percent of the employment
16 goal;
17 (v) [ten] ELEVEN percent of the recapture amount if the employment
18 shortfall is greater than ten percent of the employment goal.
19 S 2. This act shall take effect immediately.