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

107

Second Extraordinary Session

I N S E N A T E

June 24, 2009

Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- 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 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:

Section 1. Clause (G) of subparagraph (ii) 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:

(G) notwithstanding any other provisions of this section, when [a relocated] NO MORE THAN ONE vendor track LOCATED IN THE TOWN OF THOMPSON IN SULLIVAN COUNTY AT THE SITE OF THE FORMER CONCORD RESORT at which a qualified capital investment has been made and no fewer than [two] ONE thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the division shall pay into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent plus the division shall retain an amount equal to all actual expenses related to operations, administration and procurement of the video lottery terminal operation at [the relocated] NO MORE THAN ONE vendor track LOCATED IN THE TOWN OF THOMPSON IN SULLIVAN COUNTY AT THE SITE OF THE FORMER CONCORD RESORT, provided, however, such amount retained by the division shall not exceed seven percent of total revenue after payout of prizes. 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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subclause (i) of this clause, the division shall pay to the credit of the state lottery fund created by section ninety-two-c of the state finance law 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such payment exceed five million dollars.

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

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

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

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

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

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

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor track with a qualified capital investment, and the vendor fee otherwise payable to a vendor track pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

(i) [sixty-six] ONE HUNDRED percent of the recapture amount if the employment shortfall is greater than [fifty] SIXTY-SIX AND TWO-THIRDS percent of the employment goal;

(ii) [sixty] SEVENTY-FIVE percent of the recapture amount if the employment shortfall is greater than [forty] THIRTY-THREE AND ONE-THIRD percent of the employment goal;

(iii) [forty-five] FORTY-NINE AND ONE-HALF percent of the recapture amount if the employment shortfall is greater than thirty percent of the employment goal;

(iv) [twenty] TWENTY-TWO percent of the recapture amount if the employment shortfall is greater than twenty percent of the employment goal;

(v) [ten] ELEVEN percent of the recapture amount if the employment shortfall is greater than ten percent of the employment goal.

S 2. This act shall take effect immediately.