

5828

2009-2010 Regular Sessions

I N S E N A T E

June 8, 2009

Introduced by Sens. BONACIC, KLEIN -- 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 qualified capital invest-  
ments at relocated vendor tracks in Sullivan county

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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 O-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 relo-  
5 cated vendor track at which a qualified capital investment has been made  
6 and no fewer than [two] ONE thousand full-time, permanent employees have  
7 been newly hired, is located in Sullivan county and is within sixty  
8 miles from any gaming facility in a contiguous state, then for a period  
9 of forty years the division shall pay into the state treasury, to the  
10 credit of the state lottery fund created by section ninety-two-c of the  
11 state finance law the greater of (i) twenty-five percent of total reven-  
12 ue after payout for prizes for "video lottery games" or (ii) for the  
13 first eight years of operation thirty-eight million dollars, and begin-  
14 ning in the ninth year of operation such amount shall increase annually  
15 by the lesser of the increase in the consumer price index or two percent  
16 plus the division shall retain an amount equal to all actual expenses  
17 related to operations, administration and procurement of the video  
18 lottery terminal operation at the relocated vendor track, provided,  
19 however, such amount retained by the division shall not exceed seven  
20 percent of total revenue after payout of prizes. In addition, in the  
21 event the division makes a payment pursuant to subclause (i) of this  
22 clause, the division shall pay to the credit of the state lottery fund  
23 created by section ninety-two-c of the state finance law 11.11 percent  
24 of the amount by which total revenue after payout for prizes exceeds two

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

LBD14167-01-9

1 hundred fifteen million dollars, but in no event shall such payment  
2 exceed five million dollars.

3 The balance shall be paid as a vendor's fee to the track operator of  
4 the relocated vendor track for serving as a lottery agent under this  
5 chapter.

6 Provided, however, that in the case of a relocated vendor track with a  
7 qualified capital investment, if at any time after July first, two thou-  
8 sand ten the vendor track experiences an employment shortfall, then the  
9 recapture amount shall apply, for only such period as the shortfall  
10 exists.

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

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

35 For the purpose of this section "employment goal" shall mean [two] ONE  
36 thousand full-time permanent employees.

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

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

50 (i) sixty-six percent of the recapture amount if the employment short-  
51 fall is greater than fifty percent of the employment goal;

52 (ii) sixty percent of the recapture amount if the employment shortfall  
53 is greater than forty percent of the employment goal;

54 (iii) forty-five percent of the recapture amount if the employment  
55 shortfall is greater than thirty percent of the employment goal;

- 1 (iv) twenty percent of the recapture amount if the employment short-
- 2 fall is greater than twenty percent of the employment goal;
- 3 (v) ten percent of the recapture amount if the employment shortfall is
- 4 greater than ten percent of the employment goal.
- 5 S 2. This act shall take effect immediately.