

# STATE OF NEW YORK

8066

2017-2018 Regular Sessions

## IN ASSEMBLY

May 25, 2017

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

AN ACT to amend the tax law, in relation to vendor fees for video lottery gaming

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

1 Section 1. Subparagraph (ii) of paragraph 1 of subdivision b of  
2 section 1612 of the tax law, is amended by adding a new clause (F-1) to  
3 read as follows:

4 (F-1) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this  
5 subparagraph, when the vendor track is located within Oneida county, is  
6 within fifteen miles of a Native American class III gaming facility, and  
7 maintains at least ninety percent of full time equivalent employees as  
8 they employed in the year two thousand sixteen, as determined by the  
9 gaming commission, at a rate of fifty-five percent for the first thirty  
10 million dollars annually, and forty-one percent thereafter of the total  
11 revenue wagered at the vendor track after payout for prizes pursuant to  
12 this chapter;

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

16 (H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of  
17 this subparagraph, the track operator of a vendor track and in the case  
18 of Aqueduct, the video lottery terminal facility operator, shall be  
19 eligible for a vendor's capital award of up to four percent of the total  
20 revenue wagered at the vendor track after payout for prizes pursuant to  
21 this chapter, which shall be used exclusively for capital project  
22 investments to improve the facilities of the vendor track which promote  
23 or encourage increased attendance at the video lottery gaming facility  
24 including, but not limited to hotels, other lodging facilities, enter-  
25 tainment facilities, retail facilities, dining facilities, events

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

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1 arenas, parking garages and other improvements that enhance facility  
2 amenities; provided that such capital investments shall be approved by  
3 the division, in consultation with the state racing and wagering board,  
4 and that such vendor track demonstrates that such capital expenditures  
5 will increase patronage at such vendor track's facilities and increase  
6 the amount of revenue generated to support state education programs. The  
7 annual amount of such vendor's capital awards that a vendor track shall  
8 be eligible to receive shall be limited to two million five hundred  
9 thousand dollars, except for Aqueduct racetrack, for which there shall  
10 be no annual limit, provided, however, that any such capital award for  
11 the Aqueduct video lottery terminal facility operator shall be one  
12 percent of the total revenue wagered at the video lottery terminal  
13 facility after payout for prizes pursuant to this chapter until the  
14 earlier of the designation of one thousand video lottery devices as  
15 hosted pursuant to paragraph four of subdivision a of section sixteen  
16 hundred seventeen-a of this chapter or April first, two thousand nine-  
17 teen and shall then be four percent of the total revenue wagered at the  
18 video lottery terminal facility after payout for prizes pursuant to this  
19 chapter, provided, further, that such capital award shall only be  
20 provided pursuant to an agreement with the operator to construct an  
21 expansion of the facility, hotel, and convention and exhibition space  
22 requiring a minimum capital investment of three hundred million dollars.  
23 Except for tracks having less than one thousand one hundred video gaming  
24 machines, and except for a vendor track located west of State Route 14  
25 from Sodus Point to the Pennsylvania border within New York, and except  
26 for Aqueduct racetrack each track operator shall be required to co-in-  
27 vest an amount of capital expenditure equal to its cumulative vendor's  
28 capital award. For all tracks, except for Aqueduct racetrack, the amount  
29 of any vendor's capital award that is not used during any one year peri-  
30 od may be carried over into subsequent years ending before April first,  
31 two thousand eighteen. Any amount attributable to a capital expenditure  
32 approved prior to April first, two thousand eighteen and completed  
33 before April first, two thousand twenty; or approved prior to April  
34 first, two thousand twenty-two and completed before April first, two  
35 thousand twenty-four for a vendor track located west of State Route 14  
36 from Sodus Point to the Pennsylvania border within New York, shall be  
37 eligible to receive the vendor's capital award. In the event that a  
38 vendor track's capital expenditures, approved by the division prior to  
39 April first, two thousand eighteen and completed prior to April first,  
40 two thousand twenty, exceed the vendor track's cumulative capital award  
41 during the five year period ending April first, two thousand eighteen,  
42 the vendor shall continue to receive the capital award after April  
43 first, two thousand eighteen until such approved capital expenditures  
44 are paid to the vendor track subject to any required co-investment. In  
45 no event shall any vendor track that receives a vendor fee pursuant to  
46 clause (F), (F-1) or (G) of this subparagraph be eligible for a vendor's  
47 capital award under this section. Any operator of a vendor track which  
48 has received a vendor's capital award, choosing to divest the capital  
49 improvement toward which the award was applied, prior to the full depre-  
50 ciation of the capital improvement in accordance with generally accepted  
51 accounting principles, shall reimburse the state in amounts equal to the  
52 total of any such awards. Any capital award not approved for a capital  
53 expenditure at a video lottery gaming facility by April first, two thou-  
54 sand eighteen shall be deposited into the state lottery fund for educa-  
55 tion aid; and

1     § 3. Subparagraph (ii) of paragraph 1 of subdivision b of section 1612  
2 of the tax law, is amended by adding a new clause (J) to read as  
3 follows:

4     (J) In the event that the operator of a vendor track who receives a  
5 vendor fee pursuant to clause (F-1) of this subparagraph has any remain-  
6 ing funds in their vendor capital award account, any claim by the opera-  
7 tor of the vendor track on these funds shall immediately be forfeited,  
8 and the funds shall be transferred to the state lottery fund as created  
9 by section ninety-two-e of the state finance law.

10     § 4. This act shall take effect immediately.