STATE OF NEW YORK

6243--A

Cal. No. 1511

2017-2018 Regular Sessions

IN SENATE

May 11, 2017

Introduced by Sens. BONACIC, GRIFFO, AKSHAR, FUNKE, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming and Wagering -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

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

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

(H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of this subparagraph, the track operator of a vendor track and in the case of Aqueduct, the video lottery terminal facility operator, shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project

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

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investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no annual limit, provided, however, that any such capital award for the Aqueduct video lottery terminal facility operator shall be one percent of the total revenue wagered at the video lottery terminal facility after payout for prizes pursuant to this chapter until the earlier of the designation of one thousand video lottery devices as hosted pursuant to paragraph four of subdivision a of section sixteen hundred seventeen-a of this chapter or April first, two thousand nineteen and shall then be four percent of the total revenue wagered at the video lottery terminal facility after payout for prizes pursuant to this chapter, provided, further, that such capital award shall only be provided pursuant to an agreement with the operator to construct an expansion of the facility, hotel, and convention and exhibition space requiring a minimum capital investment of three hundred million dollars. Except for tracks having less than one thousand one hundred video gaming machines, and except for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York, and except for Aqueduct racetrack each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand eighteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand eighteen and completed before April first, two thousand twenty; or approved prior to April first, two thousand twenty-two and completed before April first, two thousand twenty-four for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York, shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand eighteen and completed prior to April first, two thousand twenty, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand eighteen, the vendor shall continue to receive the capital award after April first, two thousand eighteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F)**, (F-1)** or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital

expenditure at a video lottery gaming facility by April first, two thousand eighteen shall be deposited into the state lottery fund for education aid; and

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

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

§ 4. Paragraph 2 of subdivision b of section 1612 of the tax law, as amended by section 1 of part OO of chapter 59 of the laws of 2014, is amended to read as follows:

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), **(F-1),** or (G) of subparagraph (ii) of paragraph one of this subdivision, for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. 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 to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. One and one-half percent of the gross purse enhancement amount at a thoroughbred track, 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. In addition, with the exception of Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), **(F-1),** or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

§ 5. This act shall take effect immediately.