

# STATE OF NEW YORK

8415

2019-2020 Regular Sessions

## IN ASSEMBLY

June 16, 2019

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 video lottery gaming located in Orange county

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

1 Section 1. Clause (B) of subparagraph (ii) of paragraph 1 of subdivision  
2 b of section 1612 of the tax law is amended by adding a new item 5  
3 to read as follows:

4 (5) thirty percent for a video lottery gaming facility authorized  
5 pursuant to paragraph five of subdivision a of section sixteen hundred  
6 seventeen-a of this article;

7 § 2. Paragraph 2 of subdivision b of section 1612 of the tax law, as  
8 amended by section 1 of part 00 of chapter 59 of the laws of 2014, is  
9 amended to read as follows:

10 2. As consideration for the operation of a video lottery gaming facil-  
11 ity, the division, shall cause the investment in the racing industry of  
12 a portion of the vendor fee received pursuant to paragraph one of this  
13 subdivision in the manner set forth in this subdivision. With the  
14 exception of Aqueduct racetrack, a video lottery gaming facility author-  
15 ized pursuant to paragraph five of subdivision a of section sixteen  
16 hundred seventeen-a of this article or a facility in the county of  
17 Nassau or Suffolk operated by a corporation established pursuant to  
18 section five hundred two of the racing, pari-mutuel wagering and breed-  
19 ing law, each such track shall dedicate a portion of its vendor fees,  
20 received pursuant to clause (A), (B), (B-1), (B-2), (C)[~~r~~] or (D)[~~r~~], ~~(E),~~  
21 ~~(F), or (G)]~~ of subparagraph (ii) of paragraph one of this subdivision,  
22 for the purpose of enhancing purses at such track, in an amount equal to  
23 eight and three-quarters percent of the total revenue wagered at the  
24 vendor track after pay out for prizes. One percent of the gross purse  
25 enhancement amount, as required by this subdivision, shall be paid to

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

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1 the gaming commission to be used exclusively to promote and ensure  
2 equine health and safety in New York. Any portion of such funding to the  
3 gaming commission unused during a fiscal year shall be returned to the  
4 video lottery gaming operators on a pro rata basis in accordance with  
5 the amounts originally contributed by each operator and shall be used  
6 for the purpose of enhancing purses at such track. One and one-half  
7 percent of the gross purse enhancement amount at a thoroughbred track,  
8 as required by this subdivision, shall be paid to an account established  
9 pursuant to section two hundred twenty-one-a of the racing, pari-mutuel  
10 wagering and breeding law to be used exclusively to provide health  
11 insurance for jockeys. In addition, with the exception of Aqueduct race-  
12 track, a video lottery gaming facility authorized pursuant to paragraph  
13 five of subdivision a of section sixteen hundred seventeen-a of this  
14 article or a facility in the county of Nassau or Suffolk operated by a  
15 corporation established pursuant to section five hundred two of the  
16 racing, pari-mutuel wagering and breeding law, one and one-quarter  
17 percent of total revenue wagered at the vendor track after pay out for  
18 prizes, received pursuant to clause (A), (B), (B-1), (B-2), (C)[~~r~~] or  
19 (D)[~~r~~], ~~(E), (F), or (G)~~] of subparagraph (ii) of paragraph one of this  
20 subdivision, shall be distributed to the appropriate breeding fund for  
21 the manner of racing conducted by such track.

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

28 § 3. Subdivision h of section 1612 of the tax law, as amended by chap-  
29 ter 174 of the laws of 2013, is amended to read as follows:

30 h. As consideration for the operation of a video lottery gaming  
31 [~~resort~~] facility located in [~~Sullivan~~] Orange county, the division  
32 shall cause the investment in the racing industry at the following  
33 amount from the vendor fee to be paid as follows:

34 As amount to the horsemen for purses at a licensed racetrack in Sulli-  
35 van county [~~and to the agriculture and New York state horse breeding~~  
36 ~~development fund to maintain racing support payments at the same dollar~~  
37 ~~levels realized in two thousand thirteen, to be adjusted by the consumer~~  
38 ~~price index for all urban consumers, as published annually by the United~~  
39 ~~States department of labor bureau of labor statistics] in an amount  
40 equal to eight and three-quarters percent of the total revenue wagered  
41 at a video lottery gaming facility located in Orange county, after  
42 payout of prizes. In addition, one and one-quarter percent of total  
43 revenue wagered at a video lottery gaming facility located in Orange  
44 county after payout of prizes, received pursuant to clause (B) of  
45 subparagraph (ii) of paragraph one of subdivision b of this section,  
46 shall be distributed to the appropriate breeding fund for racing  
47 conducted by a racetrack located in Sullivan county. In no circumstance  
48 shall net proceeds of the lottery, including the proceeds from video  
49 lottery gaming, be used for the payment of non-lottery expenses of the  
50 gaming commission, administrative or otherwise.~~

51 § 4. Paragraphs 3 and 4 of subdivision a of section 1617-a of the tax  
52 law, as added by section 1 of part SS of chapter 60 of the laws of 2016,  
53 are amended and a new paragraph 5 is added to read as follows:

54 (3) a maximum of two facilities, which shall be vendors for all  
55 purposes under this article, neither to exceed one thousand video  
56 lottery gaming devices, established within region three of zone one as

1 defined by section one thousand three hundred ten of the racing, pari-  
2 mutuel wagering and breeding law, one each operated by a corporation  
3 established pursuant to section five hundred two of the racing, pari-mu-  
4 tuel wagering and breeding law in the Suffolk region and the Nassau  
5 region to be located within a facility authorized pursuant to sections  
6 one thousand eight or one thousand nine of the racing, pari-mutuel  
7 wagering and breeding law; ~~and~~

8 (4) Aqueduct racetrack, within the lottery terminal facility, pursuant  
9 to an agreement between the corporation established pursuant to section  
10 five hundred two of the racing, pari-mutuel wagering and breeding law in  
11 the Nassau region and the operator of video lottery gaming at Aqueduct  
12 racetrack, when such agreement is approved by the gaming commission and  
13 as long as such agreement is in place, and when such agreement is accom-  
14 panied by a detailed spending plan for the corporation established  
15 pursuant to section five hundred two of the racing, pari-mutuel wagering  
16 and breeding law in the Nassau region, which includes a plan for the  
17 timely payment of liabilities due to the franchised corporation, and  
18 when such video lottery devices are hosted by the operator of video  
19 lottery gaming at Aqueduct racetrack on behalf of the corporation estab-  
20 lished pursuant to section five hundred two of the racing, pari-mutuel  
21 wagering and breeding law in the Nassau region in lieu of the develop-  
22 ment of a facility in Nassau county as authorized by paragraph three of  
23 subdivision a of this section. Such agreement reached by the parties  
24 shall identify the agency principally responsible for funding, approving  
25 or undertaking any actions of such agreement. Provided, however, noth-  
26 ing in this paragraph shall infringe upon the rights of the corporation  
27 established pursuant to section five hundred two of the racing, pari-mu-  
28 tuel wagering and breeding law in the Nassau region to develop a facili-  
29 ty pursuant to paragraph three of this subdivision upon the expiration,  
30 termination, or withdrawal of such agreement~~[-]~~; ~~and~~

31 (5) At a facility within Orange county to be operated by the entity  
32 otherwise licensed to operate video lottery gaming at a racetrack  
33 located in Sullivan county, provided that: (i) a gaming facility, as  
34 defined in section thirteen hundred one of the racing, pari-mutuel  
35 wagering and breeding law, located in zone two of region one, has main-  
36 tained ninety percent of full-time equivalent employees as they employed  
37 in the first quarter of the fiscal year two thousand nineteen; (ii) such  
38 licensed entity is no longer operating video lottery gaming at a race-  
39 track located in Sullivan county and so long as the racetrack located in  
40 Sullivan county is conducting racing; (iii) such facility in Orange  
41 county is not sited within a thirty mile radius of the video lottery  
42 gaming facility at a racetrack located in Westchester county; (iv) the  
43 licensed entity, its subsidiaries and affiliates, including the entity  
44 licensed to operate a commercial gaming facility in Sullivan county, and  
45 Orange county enter into a mitigation agreement to be paid out of the  
46 vendor fee for the facility located in Orange county, to be approved by  
47 the gaming commission; (v) the licensed entity, its subsidiaries and  
48 affiliates, including the entity licensed to operate a commercial gaming  
49 facility in Sullivan county, and the entity licensed to operate video  
50 lottery games at Yonkers racetrack and the statutorily recognized  
51 horsemen's association at Yonkers racetrack enter into a mitigation  
52 agreement, to be approved by the gaming commission, which shall include,  
53 but not be limited to, terms that require the operator of the facility  
54 in Orange county to make an annual payment, to be paid out of the vendor  
55 fee of a facility located in Orange county to the entity licensed to  
56 operate video lottery gaming, or upon conversion of such license, to the

1 entity licensed to operate a commercial gaming facility at Yonkers race-  
2 track and the statutorily recognized horsemen's association at Yonkers  
3 racetrack to account for the effects that siting such facility in Orange  
4 county would likely have on the gross gaming revenue of the entity  
5 licensed to operate at Yonkers racetrack and upon purses and breeding  
6 fund payments from Yonkers racetrack; and (vi) the licensed entity, its  
7 subsidiaries and affiliates, including the entity licensed to operate a  
8 commercial gaming facility in Sullivan county, and Sullivan county enter  
9 into a mitigation agreement to be paid out of the vendor fee for the  
10 facility located in Orange county, to be approved by the gaming commis-  
11 sion, which shall include, but not be limited to, terms that require:  
12 (A) the operator of the facility in Orange county to make an annual  
13 payment to Sullivan county to maintain funding at the same dollar levels  
14 realized in two thousand eighteen; and (B) that upon expiration, termi-  
15 nation, or withdrawal of the agreement, the authority to operate video  
16 lottery gaming in Orange county shall cease. Notwithstanding any other  
17 provision of this subdivision, at no time shall an entity operating  
18 video lottery gaming in Orange county be permitted to apply for or  
19 receive a license to operate a commercial gaming facility in that coun-  
20 ty.

21 § 5. Paragraph 1-b of subdivision b of section 1612 of the tax law, as  
22 added by section 2 of part EE of chapter 59 of the laws of 2019, is  
23 amended to read as follows:

24 1-b. (i) Notwithstanding any provision of law to the contrary, free  
25 play allowance credits authorized by the division pursuant to subdivi-  
26 sion i of section sixteen hundred seventeen-a of this article shall not  
27 be included in the calculation of the total amount wagered on video  
28 lottery games, the total amount wagered after payout of prizes, the  
29 vendor fees payable to the operators of video lottery gaming facilities,  
30 fees payable to the division's video lottery gaming equipment contrac-  
31 tors, or racing support payments.

32 (ii) A video lottery gaming facility located in Orange county shall  
33 not utilize free play credits.

34 § 6. This act shall take effect immediately; provided, however, that  
35 no video lottery gaming may be conducted at any facility within Orange  
36 county unless and until the mitigation agreement required by this act is  
37 executed by all parties and approved by the gaming commission.