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:

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

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

§ 2. 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**, a video lottery gaming facility authorized pursuant to paragraph five of subdivision a of section sixteen hundred seventeen-a of this article** 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), **(B-1), (B-2),** (C)[~~,~~] **or** (D)[~~, (E), (F), 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

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

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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 race-track**, a video lottery gaming facility authorized pursuant to paragraph five of subdivision a of section sixteen hundred seventeen-a of this article** 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), **(B-1), (B-2),** (C)[~~,~~] **or** (D)[~~, (E), (F), 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.

§ 3. Subdivision h of section 1612 of the tax law, as amended by chapter 174 of the laws of 2013, is amended to read as follows:

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

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

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

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

defined by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law, one each operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Suffolk region and the Nassau region to be located within a facility authorized pursuant to sections one thousand eight or one thousand nine of the racing, pari-mutuel wagering and breeding law; [~~and~~]

(4) Aqueduct racetrack, within the lottery terminal facility, pursuant to an agreement between the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region and the operator of video lottery gaming at Aqueduct racetrack, when such agreement is approved by the gaming commission and as long as such agreement is in place, and when such agreement is accompanied by a detailed spending plan for the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region, which includes a plan for the timely payment of liabilities due to the franchised corporation, and when such video lottery devices are hosted by the operator of video lottery gaming at Aqueduct racetrack on behalf of the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region in lieu of the development of a facility in Nassau county as authorized by paragraph three of subdivision a of this section. Such agreement reached by the parties shall identify the agency principally responsible for funding, approving or undertaking any actions of such agreement. Provided, however, nothing in this paragraph shall infringe upon the rights of the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region to develop a facility pursuant to paragraph three of this subdivision upon the expiration, termination, or withdrawal of such agreement[~~.~~]; and

(5) At a facility within Orange county to be operated by the entity otherwise licensed to operate video lottery gaming at a racetrack located in Sullivan county, provided that: (i) a gaming facility, as defined in section thirteen hundred one of the racing, pari-mutuel wagering and breeding law, located in zone two of region one, has maintained ninety percent of full-time equivalent employees as they employed in the first quarter of the fiscal year two thousand nineteen; (ii) such licensed entity is no longer operating video lottery gaming at a racetrack located in Sullivan county and so long as the racetrack located in Sullivan county is conducting racing; (iii) such facility in Orange county is not sited within a thirty mile radius of the video lottery gaming facility at a racetrack located in Westchester county; (iv) the licensed entity, its subsidiaries and affiliates, including the entity licensed to operate a commercial gaming facility in Sullivan county, and Orange county enter into a mitigation agreement to be paid out of the vendor fee for the facility located in Orange county, to be approved by the gaming commission; (v) the licensed entity, its subsidiaries and affiliates, including the entity licensed to operate a commercial gaming facility in Sullivan county, and the entity licensed to operate video lottery games at Yonkers racetrack and the statutorily recognized horsemen's association at Yonkers racetrack enter into a mitigation agreement, to be approved by the gaming commission, which shall include, but not be limited to, terms that require the operator of the facility in Orange county to make an annual payment, to be paid out of the vendor fee of a facility located in Orange county to the entity licensed to operate video lottery gaming, or upon conversion of such license, to the

entity licensed to operate a commercial gaming facility at Yonkers racetrack and the statutorily recognized horsemen's association at Yonkers racetrack to account for the effects that siting such facility in Orange county would likely have on the gross gaming revenue of the entity licensed to operate at Yonkers racetrack and upon purses and breeding fund payments from Yonkers racetrack; and (vi) the licensed entity, its subsidiaries and affiliates, including the entity licensed to operate a commercial gaming facility in Sullivan county, and Sullivan county enter into a mitigation agreement to be paid out of the vendor fee for the facility located in Orange county, to be approved by the gaming commission, which shall include, but not be limited to, terms that require: (A) the operator of the facility in Orange county to make an annual payment to Sullivan county to maintain funding at the same dollar levels realized in two thousand eighteen; and (B) that upon expiration, termination, or withdrawal of the agreement, the authority to operate video lottery gaming in Orange county shall cease. Notwithstanding any other provision of this subdivision, at no time shall an entity operating video lottery gaming in Orange county be permitted to apply for or receive a license to operate a commercial gaming facility in that county.

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

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

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

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