

# STATE OF NEW YORK

3599

2023-2024 Regular Sessions

## IN ASSEMBLY

February 3, 2023

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. Subclause 5 of clause (B) of subparagraph (ii) of paragraph  
2 1 of subdivision b of section 1612 of the tax law, as added by section 1  
3 of part S of chapter 39 of the laws of 2019, is amended to read as  
4 follows:

5 (5) [~~forty-nine~~] thirty percent for a video lottery gaming facility  
6 authorized pursuant to paragraph five of subdivision a of section  
7 sixteen hundred seventeen-a of this article;

8 § 2. Subdivision h of section 1612 of the tax law, as amended by  
9 section 3 of part S of chapter 39 of the laws of 2019, is amended to  
10 read as follows:

11 h. As consideration for the operation of a video lottery gaming facil-  
12 ity located in Orange county, the division shall cause the investment in  
13 the racing industry at the following amount from the vendor fee to be  
14 paid as follows:

15 As amount to the horsemen for purses at a licensed racetrack in Sulli-  
16 van county in an amount equal to eight and three-quarters percent of the  
17 total revenue wagered at [~~the~~] a video lottery gaming facility located  
18 in Orange county, after pay out for prizes. The facility located in  
19 Orange county, as defined in paragraph five of subdivision a of section  
20 sixteen hundred seventeen-a of this article shall pay to the horsemen at  
21 a licensed racetrack at Yonkers racetrack an amount to maintain purses  
22 for such horsemen at the same dollar levels realized in two thousand  
23 eighteen, to be adjusted by the consumer price index for all urban  
24 consumers, as published annually by the United States department of  
25 labor bureau of labor statistics. In addition, one and one-quarter

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

LBD08336-01-3

1 percent of total revenue wagered at [~~the~~] a video lottery gaming facility  
2 located in Orange county after pay out for prizes, received pursuant  
3 to clause (B) of subparagraph (ii) of paragraph one of subdivision b of  
4 this section, shall be distributed to the appropriate breeding fund for  
5 [~~the manner of~~] racing conducted by [~~such track~~] a racetrack located in  
6 Sullivan county. In no circumstance shall net proceeds of the lottery,  
7 including the proceeds from video lottery gaming, be used for the  
8 payment of non-lottery expenses of the gaming commission, administrative  
9 or otherwise.

10 § 3. Paragraphs 5 and 6 of subdivision a of section 1617-a of the tax  
11 law, as added by section 4 of part S of chapter 39 of the laws of 2019,  
12 are amended to read as follows:

13 (5) At a facility located in Orange county to be operated by the enti-  
14 ty otherwise licensed to operate video lottery gaming at [~~Monticello~~] a  
15 racetrack in Sullivan county, provided that: (i) such licensed entity is  
16 no longer operating video lottery gaming at [~~Monticello~~] a racetrack  
17 located in Sullivan county and provided that [~~Monticello~~] the racetrack  
18 located in Sullivan county is conducting racing operations; (ii) such  
19 facility in Orange county is not sited within a thirty mile radius of  
20 the video lottery gaming facility at [~~Yonkers~~] a racetrack located in  
21 Westchester county; [~~and~~] (iii) the licensed entity, its subsidiaries  
22 and affiliates, including the entity licensed to operate a commercial  
23 gaming facility in Sullivan county, and Orange county enter into a miti-  
24 gation agreement to be paid out of the vendor fee for the facility  
25 located in Orange county, to be approved by the gaming commission; (iv)  
26 the licensed entity, its subsidiaries and affiliates, including the  
27 entity licensed to operate a commercial gaming facility in Sullivan  
28 county, and the entity licensed to operate video lottery gaming at Yonk-  
29 ers racetrack and the statutorily recognized horsemen's association at  
30 Yonkers racetrack enter into a mitigation agreement, to be approved by  
31 the gaming commission, which shall include, but not be limited to, terms  
32 that require: (A) the operator of the facility in Orange county to make  
33 an annual payment to the entity licensed to operate video lottery gaming  
34 or upon conversion of such license, to the entity licensed to operate a  
35 commercial gaming facility at Yonkers racetrack and the statutorily  
36 recognized horsemen's association at Yonkers racetrack to account for  
37 the effects that siting such facility in Orange county would likely have  
38 on the gross gaming revenue of the entity licensed to operate at Yonkers  
39 racetrack and upon purses and breeding fund payments from Yonkers race-  
40 track; (B) employment levels at the affected facilities; and (C) that  
41 upon expiration or termination of the agreement, the authority to oper-  
42 ate video lottery gaming in Orange county shall cease; and (v) the  
43 licensed entity, its subsidiaries and affiliates, including the entity  
44 licensed to operate a commercial gaming facility in Sullivan county, and  
45 Sullivan 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, which shall include, but not be limited to, terms  
48 that require: (A) the operator of the facility in Orange county to make  
49 an annual payment to Sullivan county to maintain funding at the same  
50 dollar levels realized in two thousand twenty; and (B) that upon expira-  
51 tion, termination, or withdrawal of the agreement, the authority to  
52 operate video lottery gaming in Orange county shall cease. Notwithstand-  
53 ing any other provision of this subdivision, at no time shall an entity  
54 operating video lottery gaming in Orange county be permitted to apply  
55 for or receive a license to operate a commercial gaming facility in that  
56 county.

1 (6) Notwithstanding any other provision of law to the contrary, as a  
2 condition of the license to operate a video lottery gaming facility  
3 located in Orange county, such operator shall provide an annual certif-  
4 ication to the New York state gaming commission that the staffing levels  
5 at a commercial gaming facility located in zone two, region one pursuant  
6 to section thirteen hundred ten of the racing, pari-mutuel wagering and  
7 breeding law (or any successor commercial gaming facility located in  
8 said region) are [~~no less than one thousand four hundred seventy-three~~]  
9 maintained at ninety percent of the full-time, permanent employees as  
10 they employed in the first quarter of the fiscal year two thousand twen-  
11 ty-three. In furtherance of and without limiting the foregoing, the  
12 licensee for the commercial gaming facility located in zone two, region  
13 one pursuant to section thirteen hundred ten of the racing, pari-mutuel  
14 wagering and breeding law (or any successor commercial gaming facility  
15 located in such region) shall not conduct any mass, involuntary layoff  
16 events that would trigger worker adjustment and retraining notification  
17 (WARN) act notifications pursuant to article twenty-five-A of the labor  
18 law or otherwise result in the employment levels at such facility drop-  
19 ping below levels mandated by this section. For purposes of this  
20 section, "full-time, permanent employee" shall mean an employee who has  
21 worked at the facility for a minimum of thirty-five hours per week for  
22 not less than four consecutive weeks and who is entitled to receive the  
23 usual and customary fringe benefits extended to other employees with  
24 comparable rank and duties; or two part-time employees who have worked  
25 at the facility for a combined minimum of thirty-five hours per week for  
26 not less than four consecutive weeks and who are entitled to receive the  
27 usual and customary fringe benefits extended to other employees with  
28 comparable rank and duties.

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

32 1-b. (i) Notwithstanding any provision of law to the contrary, free  
33 play allowance credits authorized by the division pursuant to subdivi-  
34 sion i of section sixteen hundred seventeen-a of this article shall not  
35 be included in the calculation of the total amount wagered on video  
36 lottery games, the total amount wagered after payout of prizes, the  
37 vendor fees payable to the operators of video lottery gaming facilities,  
38 fees payable to the division's video lottery gaming equipment contrac-  
39 tors, or racing support payments.

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

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