

# STATE OF NEW YORK

6144--A

2023-2024 Regular Sessions

## IN ASSEMBLY

April 3, 2023

Introduced by M. of A. PRETLOW, LUPARDO, BUTTENSCHON -- read once and referred to the Committee on Racing and Wagering -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the racing, pari-mutuel wagering and breeding law, in relation to the tax on gaming revenues in certain regions; to amend the tax law, in relation to the additional vendor fee for a certain track located within Oneida county; and to amend part EE of chapter 59 of the laws of 2019, amending the tax law relating to commissions paid to the operator of a video lottery facility, in relation to the effectiveness thereof

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

1 Section 1. Subdivision 1 of section 1351 of the racing, pari-mutuel  
2 wagering and breeding law, as amended by section 1 of part 000 of chap-  
3 ter 59 of the laws of 2021, is amended to read as follows:

4 1. (a) For a gaming facility in zone two, there is hereby imposed a  
5 tax on gross gaming revenues. The amount of such tax imposed shall be as  
6 follows; provided, however, should a licensee have agreed within its  
7 application to supplement the tax with a binding supplemental fee  
8 payment exceeding the aforementioned tax rate, such tax and supplemental  
9 fee shall apply for a gaming facility:

10 (1) in region two, forty-five percent of gross gaming revenue from  
11 slot machines and ten percent of gross gaming revenue from all other  
12 sources.

13 (2) in region one, thirty-nine percent of gross gaming revenue from  
14 slot machines and ten percent of gross gaming revenue from all other  
15 sources.

16 (3) in region five, thirty-seven percent of gross gaming revenue from  
17 slot machines and ten percent of gross gaming revenue from all other  
18 sources; provided however, that in the Tioga county portion of region

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

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1 five, for the period during which both of the following criteria are met  
2 (i) any facility's tax rate is adjusted by the commission pursuant to  
3 paragraph (b) of this subdivision, and (ii) a vendor track that is  
4 located within Oneida county, within fifteen miles of a Native American  
5 class III gaming facility maintains at least seventy percent of full-  
6 time equivalent employees as they employed in the year two thousand  
7 sixteen, the tax rate on facilities located in the Tioga county portion  
8 of region five shall be thirty percent of gross gaming revenue from slot  
9 machines, and ten percent of gross gaming revenue from all other sourc-  
10 es; and provided further, that any such facility shall provide an  
11 initial report to the governor, the speaker of the assembly, the tempo-  
12 rary president of the senate, and the commission detailing the projected  
13 use of funds resulting from such tax adjustment and a plan that  
14 prescribes the manner in which the licensed gaming facility receiving  
15 the reduction in its slot machine tax rate will rebuild their economic  
16 infrastructure through the rehiring of laid-off employees or the  
17 creation of new jobs. Such plan shall also clearly establish quarterly  
18 and annual employment goals of increasing full-time employees. Such  
19 initial report and accompanying plan shall be due ninety days after such  
20 reduction goes into effect. Thereafter, an annual report shall be made  
21 to the governor, the speaker of the assembly, the temporary president of  
22 the senate, and the commission detailing actual use of the funds result-  
23 ing from such tax adjustment. Such report shall include, but not be  
24 limited to, any impact on employment levels since receiving the funds,  
25 an accounting of the use of such funds, any other measures implemented  
26 to improve the financial stability of the gaming facility, and any other  
27 information as deemed necessary by the commission. Such report shall be  
28 due no later than the first day of the fourth quarter in each year such  
29 tax rate has been granted.

30 (b) (1) Notwithstanding the rates in paragraph (a) of this subdivi-  
31 sion, a gaming facility may petition the commission to lower the tax  
32 rate applicable to its slot machines to no lower than thirty percent. In  
33 analyzing such request, the commission shall evaluate the petition using  
34 the following criteria:

35 (i) the ability of the licensee to satisfy the license criterion of  
36 financial stability absent the tax rate reduction;

37 (ii) a complete examination of all financial projections, as well as  
38 gaming revenues generated for the prior annual period;

39 (iii) the licensee's intended use of the funds resulting from a tax  
40 adjustment;

41 (iv) the inability of the operator to remain competitive under the  
42 current tax structure;

43 (v) positions advanced by other gaming operators in the state in  
44 response to the petition;

45 (vi) the impact on the competitive landscape;

46 (vii) other economic factors such as employment and the potential  
47 impact upon other businesses in the region; and

48 (viii) the public interest to be served by a tax adjustment, including  
49 the impact upon the state in the event the operator is unable to remain  
50 financially viable.

51 (2) The commission shall report their recommendation solely based on  
52 the criteria listed in subparagraph one of this paragraph to the direc-  
53 tor of the division of budget who will make a final approval.

54 (3) (i) As a condition of the lower slot machine tax rate, such gaming  
55 facility shall provide an initial report to the governor, the speaker of  
56 the assembly, the temporary president of the senate, and the commission

1 detailing the projected use of funds resulting from such tax adjustment  
2 and a plan that prescribes the manner in which the licensed gaming  
3 facility potentially receiving the reduction in its slot machine tax  
4 rate will rebuild their economic infrastructure through the rehiring of  
5 laid-off employees or the creation of new jobs. Such plan shall also  
6 clearly establish quarterly and annual employment goals of increasing  
7 full-time employees. Such initial report and accompanying plan shall be  
8 due at the time a facility is granted a tax adjustment. Thereafter, an  
9 annual report shall be made to the governor, the speaker of the assem-  
10 bly, the temporary president of the senate, and the commission detailing  
11 actual use of the funds resulting from such tax adjustment. Such report  
12 shall include, but not be limited to, any impact on employment levels  
13 since receiving the funds, an accounting of the use of such funds, any  
14 other measures implemented to improve the financial stability of the  
15 gaming facility, any relevant information that helped in the determi-  
16 nation of such slot tax rate reduction, and any other information as  
17 deemed necessary by the commission. Such report shall be due no later  
18 than the first day of the fourth quarter after such tax rate has been  
19 granted.

20 (ii) (A) At the conclusion of each year, a licensed gaming facility  
21 shall provide an affirmation in writing to the commission stating the  
22 employment goal in clause (i) of this subparagraph was either met or not  
23 met as described in the initial report. If the licensed gaming facility  
24 is found to have not adhered to the plan by the commission, then the  
25 applicable slot tax rate shall be adjusted at the discretion of the  
26 commission as follows:

27 1. If the actual employment number is more than fifty percent less  
28 than the employment goal, then the slot tax rate shall be increased by  
29 ten percentage points.

30 2. If the actual employment number is more than forty percent less  
31 than the employment goal, then the slot tax rate shall be increased by  
32 eight percentage points.

33 3. If the actual employment number is more than thirty percent less  
34 than the employment goal, then the slot tax rate shall be increased by  
35 six percentage points.

36 4. If the actual employment number is more than twenty percent less  
37 than the employment goal, then the slot tax rate shall be increased by  
38 four percentage points.

39 5. If the actual employment number is more than ten percent less than  
40 the employment goal, then the slot tax rate shall be increased by two  
41 percentage points.

42 (B) Such finding and the reasoning thereof shall occur no later than  
43 thirty days following submission of the written affirmation.

44 (iii) A licensed gaming facility may petition the commission to lower  
45 the tax rate applicable to its slot machines to no lower than thirty  
46 percent no more than once annually after the effective date of the chap-  
47 ter of the laws of two thousand twenty-one which amended this subdivi-  
48 sion. A licensed gaming facility may request a revision to its plan in  
49 its initial report due to unforeseen circumstances.

50 § 2. Clause (B) of subparagraph (iii) of paragraph 1 of subdivision b  
51 of section 1612 of the tax law, as added by section 1 of part EE of  
52 chapter 59 of the laws of 2019, is amended to read as follows:

53 (B) for a vendor track that is located within Oneida county, within  
54 fifteen miles of a Native American class III gaming facility, such addi-  
55 tional vendor fee shall be six and four-tenths percent of the total  
56 revenue wagered at the vendor after payout for prizes pursuant to this

1 chapter. The vendor track shall forfeit this additional vendor fee for  
2 any time period that the vendor track does not maintain at least [~~nine-~~  
3 ~~ty~~] seventy percent of full-time equivalent employees as they employed  
4 in the year two thousand sixteen.

5 § 3. Section 3 of part EE of chapter 59 of the laws of 2019, amending  
6 the tax law relating to commissions paid to the operator of a video  
7 lottery facility, is amended to read as follows:

8 § 3. This act shall take effect immediately; provided, however, clause  
9 (B) of subparagraph (iii) of paragraph 1 of subdivision b of section  
10 1612 of the tax law as added by section one of this act shall take  
11 effect June 30, 2019 and shall expire and be deemed repealed March 31,  
12 [~~2023~~] 2027.

13 § 4. This act shall take effect immediately; provided, however, that  
14 the amendments to subdivision 1 of section 1351 of the racing, pari-mu-  
15 tuel wagering and breeding law made by section one of this act shall not  
16 affect the expiration and reversion of such subdivision and shall be  
17 expired and deemed repealed therewith; provided further, however, that  
18 the amendments to clause (B) of subparagraph (iii) of paragraph 1 of  
19 subdivision b of section 1612 of the tax law made by section two of this  
20 act shall not affect the expiration and repeal of such clause and shall  
21 expire and be deemed repealed therewith; provided, further, notwith-  
22 standing the provisions of article 5 of the general construction law,  
23 the provisions of clause (B) of subparagraph (iii) of paragraph 1 of  
24 subdivision b of section 1612 of the tax law, as amended by section two  
25 of this act, are hereby revived and shall continue in full force and  
26 effect as such provisions existed on March 30, 2023.