STATE OF NEW YORK

3508

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 and the state finance law, in relation to video lottery gaming in the town of Woodbury

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

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

(5) [~~forty-nine~~] ***sixty-four*** percent for a video lottery gaming facility authorized pursuant to paragraph [~~five~~] ***eight*** 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 2 of part S of chapter 39 of the laws of 2019, 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~~] ***eight*** 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) 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

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

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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, a video lottery gaming facility authorized pursuant to paragraph [~~five~~] **eight** 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) 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 section 3 of part S of chapter 39 of the laws of 2019, is amended to read as follows:

h. As consideration for the operation of a video lottery gaming facility located in **the town of Woodbury, county of** 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 in an amount equal to eight and three-quarters percent of the total revenue wagered at the video lottery gaming facility, after pay out for prizes. The [~~facility located in Orange county, as defined in paragraph five of subdivision a of section sixteen hundred seventeen-a of this article shall pay to the~~] horsemen at a licensed racetrack **in Sullivan county shall pay to the horsemen** at **a licensed racetrack at** Yonkers racetrack an amount to maintain purses for such horsemen at the same dollar levels realized in two thousand eighteen, 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 addition, one and one-quarter percent of total revenue wagered at the video lottery gaming facility after pay out for 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 the manner of racing conducted by such track. 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. Subdivision a of section 1617-a of the tax law is amended by adding four new paragraphs 8, 9, 10 and 11 to read as follows:

(8) At a facility located in the town of Woodbury, county of Orange to be operated by the entity otherwise licensed to operate video lottery gaming at Monticello racetrack, provided that: (i) such licensed entity is no longer operating video lottery gaming at Monticello racetrack and provided that Monticello racetrack is conducting racing operations; (ii) such facility in the town of Woodbury, county of Orange is not sited within a thirty mile radius of the video lottery gaming facility at Yonkers racetrack; and (iii) 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 gaming 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: (A) the operator of the facility in the town of Woodbury, county of Orange to make an annual payment to the entity licensed to operate video lottery gaming or commercial gaming 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; (B) employment levels at the affected facilities; and (C) that upon expiration or termination 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. Notwithstanding any other provision of law to the contrary, at no time shall an entity operating video lottery gaming in the town of Woodbury, county of Orange be permitted to enter into any agreement with, or accept any benefit from, an entity authorized pursuant to article eighteen-A of the general municipal law, including but not limited to payments in lieu of taxes authorized by section eight hundred fifty-eight of the general municipal law.

(9) Notwithstanding any other provision of law to the contrary, as a condition of the license to operate a video lottery gaming facility located in the town of Woodbury, county of Orange, such operator shall provide an annual certification to the New York state gaming commission that the staffing levels at a commercial gaming facility located in zone two, region one pursuant to section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law (or any successor commercial gaming facility located in said region) are no less than one thousand four hundred thirteen full-time, permanent employees. In furtherance of and without limiting the foregoing, the licensee for the commercial gaming facility located in zone two, region one pursuant to section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law (or any successor commercial gaming facility located in such region) shall not conduct any mass, involuntary layoff events that would trigger worker adjustment and retraining notification (WARN) act notifications pursuant to article twenty-five-A of the labor law or otherwise result in the employment levels at such facility dropping below levels mandated by this section. For purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the facility for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the facility for a combined minimum of thirty-five hours per week for not less than four consecutive

weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

(10) Notwithstanding any other provision of law to the contrary, as a condition of the license to operate a video lottery gaming facility located in the town of Woodbury, county of Orange, such operator shall maintain assistance payments made pursuant to section fifty-four-l of the state finance law to the village of Monticello, Sullivan county, the town of Thompson, Sullivan county, and Sullivan county. Payments made pursuant to this paragraph shall be made quarterly at the same dollar level realized by such municipalities in two thousand twenty-two, to be adjusted annually pursuant to changes in the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics. As an additional condition for such license, such operator shall maintain additional quarterly assistance payments to Sullivan county in annualized amounts equal to the sales taxes paid to such county by the operator of the commercial gaming facility located in zone two, region one pursuant to section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law (or any successor commercial gaming facility located in said region) in the year two thousand twenty, to be adjusted annually pursuant to changes in the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics.

(11) Notwithstanding any other provision of law to the contrary, no license shall be granted to operate a video gaming facility located in the town of Woodbury, county of Orange, prior to the execution of a memorandum of understanding between such operator and the county of Sullivan, which shall be approved by passage of a resolution of the Sullivan county legislature. Such memorandum of understanding shall include, but not be limited to, terms that provide for a one-time payment in the amount of one million dollars from such operator to the county of Sullivan, in addition to any other terms.

§ 5. Section 54-l of the state finance law is amended by adding a new subdivision 6 to read as follows:

6. Notwithstanding any other provision of law to the contrary, all municipalities within which the facility referenced in paragraph eight of subdivision a of section sixteen hundred seventeen-a of the tax law is located, shall be eligible for state assistance to eligible cities and eligible municipalities pursuant to this section; provided, however, that if such facility is located within the geographic boundaries of more than one village, each such village shall receive an equal amount of state assistance pursuant to this section. State assistance awarded to such cities and municipalities shall not be less than three million dollars per award regardless of the number of such cities or municipalities receiving such award.

§ 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.