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:

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~~] **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. 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 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~~] **a** video lottery gaming facility **located in Orange county**, 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 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

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

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percent of total revenue wagered at [~~the~~] a video lottery gaming facility located in Orange county 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~~] 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.

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

(5) At a facility located in Orange county to be operated by the entity otherwise licensed to operate video lottery gaming at [~~Monticello~~] a racetrack in Sullivan county, provided that: (i) such licensed entity is no longer operating video lottery gaming at [~~Monticello~~] a racetrack located in Sullivan county and provided that [~~Monticello~~] the racetrack located in Sullivan county is conducting racing operations; (ii) such facility in Orange county is not sited within a thirty mile radius of the video lottery gaming facility at [~~Yonkers~~] a racetrack located in Westchester county; [~~and~~] (iii) 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; (iv) 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 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: (A) the operator of the facility in Orange county to make an annual payment 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; (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; and (v) 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 twenty; 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.

(6) Notwithstanding any other provision of law to the contrary, as a condition of the license to operate a video lottery gaming facility located in Orange county, 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 seventy-three~~] **maintained at ninety percent of the** full-time, permanent employees **as they employed in the first quarter of the fiscal year two thousand twenty-three**. 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.

§ 4. 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.

§ 5. 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.