

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.

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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 certifi-
4 cation 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.