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:

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

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

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

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

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

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

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

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

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

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

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

(vi) the impact on the competitive landscape;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) for a vendor track that is located within Oneida county, within fifteen miles of a Native American class III gaming facility, such additional vendor fee shall be six and four-tenths percent of the total revenue wagered at the vendor after payout for prizes pursuant to this chapter. The vendor track shall forfeit this additional vendor fee for any time period that the vendor track does not maintain at least [~~ninety~~] **seventy** percent of full-time equivalent employees as they employed in the year two thousand sixteen.

§ 3. Section 3 of 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, is amended to read as follows:

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

§ 4. This act shall take effect immediately; provided, however, that the amendments to subdivision 1 of section 1351 of the racing, pari-mutuel wagering and breeding law made by section one of this act shall not affect the expiration and reversion of such subdivision and shall be expired and deemed repealed therewith; provided further, however, that the amendments to clause (B) of subparagraph (iii) of paragraph 1 of subdivision b of section 1612 of the tax law made by section two of this act shall not affect the expiration and repeal of such clause and shall expire and be deemed repealed therewith; provided, further, notwithstanding the provisions of article 5 of the general construction law, the provisions of clause (B) of subparagraph (iii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section two of this act, are hereby revived and shall continue in full force and effect as such provisions existed on March 30, 2023.