§ 1351. Tax on gaming revenues; permissive supplemental fee. * 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 five, for the period of fiscal years two thousand twenty-four, two thousand twenty-five, and two thousand twenty-six, 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. Any money realized from the decrease in their slot machine tax rate shall only be used by the facility to offer childcare for employees, food and beverage conversion, any other project or use that improves the economic infrastructure of the facility, or for rehiring laid-off workers, hiring new workers or retaining current workers at the facility. The 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 offering of childcare for employees, food and beverage conversion, or any other project or use that improves the economic infrastructure of the facility, or for rehiring laid-off workers, hiring new workers, or retaining current workers at the facility or the creation of new jobs. Such plan shall also clearly establish quarterly and annual employment goals of increasing full-time employees. The facility shall be subject to the conditions set forth in clause (ii) of subparagraph three of paragraph (b) of this subdivision. 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 or subparagraph three of paragraph (a) of this subdivision, 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.

* NB Effective until April 1, 2026

* 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.

(b) (1) Notwithstanding the tax rates on gross gaming revenue from slot machines provided in paragraph (a) of this subdivision, for the period of April first, two thousand twenty-six through June thirtieth, two thousand thirty-one, each gaming facility in zone two shall continue to be subject to the same tax rate on gross gaming revenue from slot machines as was imposed in the preceding fiscal year.

(2) As a condition of the lower slot machine tax rate, the licensed gaming facility must:

(i) be current on all statutory obligations to the state or have entered into and be in compliance with a repayment agreement with the state. If the commission, in its sole discretion, determines that a gaming facility has not adhered to this condition for any such time period, the gaming facility shall forfeit this lower slot machine tax rate for such time period.

(ii) have provided the initial report to the governor, the speaker of the assembly, the temporary president of the senate, and the commission as required pursuant to subdivision one-b of this section.

(3) (i) Each gaming facility shall provide an annual fiscal report to the governor, the speaker of the assembly, the temporary president of the senate, director of the division of budget and the commission detailing actual use of the funds resulting from the lower slot machine tax rate. Such report shall include, but not be limited to, any impact on employment levels since receiving the lower slot machine tax rate, 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 January first of each year and shall be posted on the commission website.

(ii) At the conclusion of each year, a licensed gaming facility shall provide an affirmation in writing to the commission stating the employment goal in subdivision one-b of this section 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 may be adjusted at the discretion of the commission as follows:

(A) 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.

(B) 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.

(C) 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.

(D) 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.

(E) 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.

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

* NB Effective April 1, 2026 until July 1, 2031

* 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

five, for the period of fiscal years two thousand twenty-four, two thousand twenty-five, and two thousand twenty-six, 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. Any money realized from the decrease in their slot machine tax rate shall only be used by the facility to offer childcare for employees, food and beverage conversion, any other project or use that improves the economic infrastructure of the facility, or for rehiring laid-off workers, hiring new workers or retaining current workers at the facility. The 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 offering of childcare for employees, food and beverage conversion, or any other project or use that improves the economic infrastructure of the facility, or for rehiring laid-off workers, hiring new workers, or retaining current workers at the facility or the creation of new jobs. Such plan shall also clearly establish quarterly and annual employment goals of increasing full-time employees. The facility shall be subject to the conditions set forth in clause (ii) of subparagraph three of paragraph (b) of this subdivision. 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 or subparagraph three of paragraph (a) of this subdivision, 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.

* NB Effective July 1, 2031

1-a. For a gaming facility licensed pursuant to title two-A of this article, there is hereby imposed a tax on gross gaming revenues with the rates to be determined by the gaming commission pursuant to a competitive bidding process as outlined in title two-A of this article; provided however that the tax rate on gross gaming revenue from slot machines shall be no less than twenty-five percent and the tax rate on gross gaming revenue from all other sources shall be no less than ten percent.

* 1-b. As a condition of the lower slot machine tax rate taking effect April first, two thousand twenty-six, pursuant to subdivision one of this section, the licensed gaming facility must provide an initial report to the governor, the speaker of the assembly, the temporary president of the senate, and the commission clearly detailing the established quarterly and annual employment goals of increasing full-time employees for each year that the facility will receive a lower tax rate and any substantial changes to the initial plan. This report is due no later than January first, two thousand twenty-six and shall be posted on the commission's website.

* NB Repealed July 1, 2031

2. Permissible deductions. (a) A gaming facility may deduct from gross gaming revenue the amount of approved promotional gaming credits issued to and wagered by patrons of such gaming facility. The amount of approved promotional credits shall be calculated as follows:

(1) for the period commencing on April first, two thousand eighteen and ending on March thirty-first, two thousand twenty-one, an aggregate maximum amount equal to nineteen percent of the base taxable gross gaming revenue amount during the specified period;

(2) for the period commencing on April first, two thousand twenty-one and ending on March thirty-first, two thousand twenty-three, a maximum amount equal to nineteen percent of the base taxable gross gaming revenue amount for each fiscal year during the specified period; and

(3) for the period commencing on April first, two thousand twenty-three and thereafter, a maximum amount equal to fifteen percent of the base taxable gross gaming revenue amount for each fiscal year during the specified period.

(b) For purposes of paragraph (a) of this subdivision, "base taxable gross gaming revenue amount" means that portion of gross gaming revenue not attributable to deductible promotional credit.

(c) Any tax due on promotional credits deducted during the fiscal year in excess of the allowable deduction shall be paid within thirty days from the end of the fiscal year.

(d) Only promotional credits that are issued pursuant to a written plan approved by the commission as designed to increase revenue at the facility may be eligible for such deduction. The commission, in conjunction with the director of the budget, may suspend approval of any plan whenever they jointly determine that the use of the promotional credits under such plan is not effective in increasing the amount of revenue earned.