

HB 1212
House Finance & Taxation Committee
Submitted by Don Santer, NDAD
January 26th, 2021

Chairman Headland and Committee members, thank you for the opportunity to provide information regarding the charitable gaming industry of North Dakota. I am here in support of House Bill 1212.

My name is Don Santer, CEO of the North Dakota Association for the Disabled (NDAD). NDAD is a North Dakota charity that for over 45 years has been dedicated to improving the quality of life for persons with disabilities.

NDAD is a non-profit, charitable organization serving individuals with health concerns and disabilities across the state of North Dakota. We have locations in Grand Forks, Fargo, Bismarck, Minot, and Williston. In 2019, NDAD provided over \$2 million in services assisting thousands of North Dakota residents. NDAD works diligently to not duplicate services provided by other state or local entities, so we truly are a last resort for many individuals. As part of our services NDAD paid for the majority of the following items with charitable gaming funds:

- 1639 prescriptions for covered medications
- 2,801 out of town medical travel trips
- 3,502 accessible rides for employment, shopping, and community events
- 7,048 hours of personal attendant care expenses
- Each year 25-50 individuals are assisted with adaptive recreational activities
- Our **Healthcare Equipment Loan Program (HELP)** served 2032 people with 4,366 pieces of equipment equating to a savings of more than \$530,000 for North Dakota residents.

Additionally, NDAD administers the North Dakota Transplant Fund, provides program services for independent living and behavioral health issues in the Williston area, as well as providing information, referral, and public awareness to North Dakota residents. Our mission is to serve the residents of North Dakota and with your Do Pass vote, we could utilize potential tax savings to help an even greater number of North Dakotans.

House Bill 1212 addresses several issues in the gaming industry:

1. Creates a charitable gaming operating fund that will assure the administrative, regulatory, enforcement, technology, and addiction funding needed is available.
2. It reestablishes the original constitutional intent for use of gaming funds. Gaming Tax was intended only to raise enough revenue to cover the cost of appropriately regulating and maintaining oversight of the industry. All other proceeds should be utilized for its intended charitable purpose and in the region it was generated.
3. Creates a tax rate based on adjusted gross proceeds and simplifies the tax code for gaming.

- Currently gaming tax is imposed on the total **gross proceeds** received by a licensed organization in a quarter. "Gross proceeds" means all cash and checks received from conducting games.
- The following are just a few examples to help explain the tax on gross proceeds for the most common game types:
 - Electronic Pull Tab device (etab) is taxed on each ticket played. A player purchases \$10 in credits on an etab machine and wins \$100 in credits during the course of play; the player plays all credits without purchasing additional credits; the charity is taxed on \$110 (Gross Proceeds) but only \$10 of actual cash went into the machine. Although rare, it is possible the charity may pay out more in winning credits than it takes in cash depending on when the large win tickets come out. In that situation they would be taxed on a loss. This same scenario can happen with paper pull tabs.
 - Twenty-one and Paddle Wheel are taxed based on the chips purchased (the Drop) by the player. The player wagers the chips and may win and lose over and over without buying more chips. At the end of play the charity is taxed on the actual cash Drop (chips purchased) for the session. If a player buys \$100 in chips, then decides to leave the site and cashes in the chips without making a wager; the organization is still taxed on the \$100 purchase. In a different scenario, the player buys \$100 in chips and wins \$1000 the organization still pays tax on the \$100 even though they lost \$900.
 - Setting a tax on "***Adjusted Gross***" (gross proceeds less cash prizes and cost of merchandise prizes) eliminates the taxation of "credits" and unifies tax calculations for all game types. In other words, a tax on the actual earnings and not on phantom dollars.

Recently I have heard erroneous statements made in hearings and in the media about the North Dakota charitable gaming industry, as they are related, I would like to take a moment to respond to some of them:

- **The charitable gaming industry is not properly regulated.**
 - I personally spend a considerable amount of time throughout the year talking to the AG's office, searching through 222 pages of laws and regulations in the current code book, preparing for audits, and testifying at hearings.
 - Proper funding for regulating the industry is the issue— the industry is highly regulated but recent budget cuts have restricted or limited the AG's gaming division office to effectively enforce and monitor the charitable gaming industry. This bill is intended to fix that issue.
- ***The charities do not issue IRS W-2G tax forms for electronic pull tab winnings.***
 - The IRS requires U.S. citizens to report **all gaming income** on their tax return, even if they were not issued a W2-G.
 - Federal IRS Laws require W-2G forms to be issued by gaming facilities on certain gambling winnings. The specific requirements for issuing and reporting a W-2G

form depend on the type of gambling, the ratio of the winnings to the wager, and the amount of the gambling winnings. For instance:

- Bingo winnings and Tribal slot machine winnings in the amount of \$1,200 or more require a W-2G to be issued.
 - A winning ticket for either paper or electronic pull tabs valued more than \$600 require a W-2G to be issued. For quick reference, just one gaming charity in North Dakota, NDAD, issued 139 W-2G's in 2018; 192 in 2019; and 235 in 2020.
 - In addition to the W-2G's, North Dakota law requires charities to perform a child support check and intercept of gambling winnings when a W-2G has been issued and past due child support is owed. This intercept of gambling winnings is not a federal requirement and is not performed at tribal casinos.
 - Generally, charities avoid running games with prizes large enough to require W-2G's to be issued at all. This is because the charity may be liable for the tax if done incorrectly, players are not very cooperative giving personal information required by the IRS, and players often get irate and rude with the gaming staff; particularly if back child support is owed and the funds must be intercepted.
- **North Dakota electronic pull tab machines are not regulated well enough and allow for sex trafficking and money laundering.**
 - The recent unsubstantiated statements made in the press and at legislative committee hearings related to money laundering and sex trafficking concerns connected to electronic pull tab machines are inflammatory and vague by design. They are intended to draw suspicion and cause public distrust in the charitable gaming industry. These allegations have been made without providing any evidence, direct or indirect, and supply no specific details for how or if any such activity is actually happening.
 - At a recent interim committee hearing, Chief Deputy Attorney General, Troy Siebel was asked if these concerns were based in fact or just anecdotal; he stated he was not aware of any, past or present, sex trafficking or money laundering cases connected to charitable gaming or electronic pull tab machines in the state of North Dakota.
 - Money laundering requires a way to prove a legitimate source of funds. Even if a player decided to feed cash into a machine and then cash out, they would not be issued a W-2G; in other words, no winnings, no legitimate source of funds all they could do is exchange currency. Again, charities try and avoid prizes that require a W2G to limit their risk and to reduce the large banks required to cover big payouts.

For the past 40 years North Dakota has developed a responsible and highly regulated system for charitable gaming to benefit charitable missions that serve your local communities. Charitable gaming was legalized to enable charities a way to generate critical financial resources to serve their charitable purposes while reducing or even eliminating their reliance on public tax dollars for that funding. Charitable gaming also provides good paying jobs. The funding generated for charities supports wages for their employees providing services but also generates job opportunities for gaming employees. NDAD currently has 79 employees across the state with jobs related specifically to charitable gaming; their combined wages average over \$250,000 per month.

Again, thank you for your thoughtful consideration to develop a fairer tax structure, and a **Do Pass** recommendation on **HB 1212**.

Thank you, Mr. Chairman and members of the committee, for your time. I am happy to answer any additional questions you may have.

Respectfully,
Don Santer, CEO
NDAD