

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2042

Introduced by

Legislative Management

(Judiciary Committee)

1 A BILL for an Act to amend and reenact subsection 1 of section 53-06.1-01 and sections
2 53-06.1-11, 53-06.1-12, and 53-06.1-12.3 of the North Dakota Century Code, relating to
3 consolidation of gaming taxes and allowable expenses; and to provide for a legislative
4 management study.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 1 of section 53-06.1-01 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of
9 merchandise prizes, ~~bingo cards excise tax, pull tab excise tax, gaming tax,~~ and
10 federal excise tax imposed under section 4401 of the Internal Revenue Code
11 [26 U.S.C. 4401].

12 **SECTION 2. AMENDMENT.** Section 53-06.1-11 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **53-06.1-11. Gross proceeds - Allowable expenses - Rent limits.**

- 15 1. All money received from games must be accounted for according to the gaming rules.
16 Gaming activity for a quarter must be reported on a tax return form prescribed by the
17 attorney general. Unless otherwise authorized by the attorney general, the purchase
18 price of a merchandise prize must be paid from a gaming bank account by check. No
19 check drawn from a gaming or trust bank account may be payable to "cash" or a
20 fictitious payee. A cash prize that exceeds an amount set by rule must be accounted
21 for by a receipt prescribed by the gaming rules.
- 22 2. Allowable expenses may be deducted from adjusted gross proceeds. The allowable
23 expense limit is ~~fifty-one~~sixty percent of the ~~first two hundred thousand dollars of~~
24 ~~adjusted gross proceeds per quarter and forty-five percent of the adjusted gross~~

- 1 proceeds in excess of two hundred thousand dollars per quarter. In addition, an
2 organization may deduct as an allowable expense:
- 3 a. ~~Two and one-half percent of the gross proceeds of pull tabs.~~
- 4 b. ~~Capital expenditures for security or video surveillance equipment used for~~
5 ~~controlling games if the equipment is required by section 53-06.1-10 or~~
6 ~~authorized by rule, and it is approved by the attorney general.~~
- 7 c. ~~If an organization's total actual expenses exceed the allowable expenses~~
8 ~~provided by this subsection, the organization may also deduct the expenses up to~~
9 ~~two additional percent of the first two hundred thousand dollars of adjusted gross~~
10 ~~proceeds per quarter.~~
- 11 3. Cash shorts incurred in games and interest and penalty are classified as expenses.
- 12 4. For a site where bingo is conducted:
- 13 a. ~~Except under subdivision c, if~~ bingo is the primary game, the monthly rent must
14 be reasonable.
- 15 b. If bingo is not the primary game, but is conducted with twenty-one, paddlewheels,
16 or pull tabs, no additional rent is allowed.
- 17 c. ~~If bingo is conducted through a dispensing device and no other game is~~
18 ~~conducted, the monthly rent may not exceed two hundred seventy-five dollars.~~
- 19 5. For a site where bingo is not the primary game:
- 20 a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed
21 two hundred dollars multiplied by the necessary number of tables based on
22 criteria prescribed by gaming rule. For each twenty-one table with a wager
23 greater than five dollars, an additional amount up to one hundred dollars may be
24 added to the monthly rent. If pull tabs is also conducted involving a jar bar or
25 dispensing device, but not both, the monthly rent for pull tabs may not exceed an
26 additional one hundred seventy-five dollars. If pull tabs is conducted involving
27 both a jar bar and dispensing device, the monthly rent for pull tabs may not
28 exceed an additional two hundred dollars.
- 29 b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted
30 involving a jar bar or dispensing device, but not both, the monthly rent may not
31 exceed two hundred seventy-five dollars. If pull tabs is conducted involving both

1 a jar bar and dispensing device, the monthly rent for pull tabs may not exceed
2 three hundred dollars.

3 ~~SECTION 3. AMENDMENT.~~ Section 53-06.1-12 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 ~~53-06.1-12. Gaming and excise taxes -- Exception tax -- Deposits and allocations.~~

6 ~~1. A gaming tax is imposed on the total adjusted gross proceeds earned received by a~~
7 ~~licensed organization in a quarter and it must be computed and paid to the attorney~~
8 ~~general on a quarterly basis on the tax return. This tax must be paid from adjusted~~
9 ~~gross proceeds and is not part of the allowable expenses. The tax rates are:~~

10 ~~a. On adjusted gross proceeds not exceeding two hundred thousand dollars, a tax~~
11 ~~of five percent.~~

12 ~~b. On adjusted gross proceeds exceeding two hundred thousand dollars but not~~
13 ~~exceeding four hundred thousand dollars, a tax of ten percent.~~

14 ~~c. On adjusted gross proceeds exceeding four hundred thousand dollars but not~~
15 ~~exceeding six hundred thousand dollars, a tax of fifteen percent.~~

16 ~~d. On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of~~
17 ~~twenty percent.~~

18 ~~2. Except as provided in subsection 3, in addition to any other tax provided by law and in~~
19 ~~place of sales or use taxes, there is imposed on a licensed organization an excise tax~~
20 ~~of three percent on the gross proceeds from the sale at retail of pull tabs and three~~
21 ~~percent on the gross proceeds from the sale at retail of bingo cards to final users. This~~
22 ~~includes pull tabs or bingo cards provided to a player in exchange for redeemed~~
23 ~~winning pull tabs or bingo cards rate is one percent of gross proceeds. The tax must be~~
24 ~~paid to the attorney general at the time tax returns are filed.~~

25 ~~3. For organizations whose gross proceeds of pull tabs do not exceed four thousand~~
26 ~~dollars per calendar quarter, no excise tax may be imposed on the gross proceeds~~
27 ~~from the sale at retail of pull tabs to final users.~~

28 ~~4.2. Except as provided in subsection 53, the attorney general shall deposit the~~
29 ~~gaming and excise taxes tax, monetary fines, and interest and penalties collected in~~
30 ~~the general fund in the state treasury.~~

~~5.3. The attorney general shall deposit threeten percent of the total taxes, less refunds, collected under this section into a gaming and excise tax allocation fund. Pursuant to legislative appropriation, moneys in the fund must be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations conducting games within each city, for sites within city limits, or within each county, for sites outside city limits. If a city or county allocation under this subsection is less than two hundred dollars, that city or county is not entitled to receive a payment for the quarter and the undistributed amount must be included in the total amount to be distributed to other cities and counties for the quarter.~~

SECTION 3. AMENDMENT. Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Gaming ~~and excise taxes~~ - Exception tax - Deposits and allocations.

1. A gaming tax is imposed on the total ~~adjusted~~ gross proceeds ~~earned~~ received by a licensed organization in a quarter and it must be computed and paid to the attorney general on a quarterly basis on the tax return. This tax must be paid from adjusted gross proceeds and is not part of the allowable expenses. The tax ~~rates are:~~

~~a. On adjusted gross proceeds not exceeding two hundred thousand dollars, a tax of five percent.~~

~~b. On adjusted gross proceeds exceeding two hundred thousand dollars but not exceeding four hundred thousand dollars, a tax of ten percent.~~

~~c. On adjusted gross proceeds exceeding four hundred thousand dollars but not exceeding six hundred thousand dollars, a tax of fifteen percent.~~

~~d. On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of twenty percent.~~

~~2. Except as provided in subsection 3, in addition to any other tax provided by law and in place of sales or use taxes, there is imposed on a licensed organization an excise tax of three percent on the gross proceeds from the sale at retail of pull tabs and three percent on the gross proceeds from the sale at retail of bingo cards to final users. This includes pull tabs or bingo cards provided to a player in exchange for redeemed winning pull tabs or bingo cards.~~ rate for a licensed organization with gross proceeds:

a. Not exceeding five hundred thousand dollars is one percent of gross proceeds.

1 b. Exceeding five hundred thousand dollars but not exceeding one million dollars is
2 one and one-half percent of gross proceeds.

3 c. Exceeding one million dollars but not exceeding one million five hundred
4 thousand dollars is two percent of gross proceeds.

5 d. Exceeding one million five hundred thousand dollars is two and one-half percent
6 of gross proceeds.

7 2. The tax must be paid to the attorney general at the time tax returns are filed.

8 ~~3. For organizations whose gross proceeds of pull tabs do not exceed four thousand-~~
9 ~~dollars per calendar quarter, no excise tax may be imposed on the gross proceeds-~~
10 ~~from the sale at retail of pull tabs to final users.~~

11 ~~4.~~ Except as provided in subsection ~~54~~, the attorney general shall deposit gaming and
12 excise taxes, monetary fines, and interest and penalties collected in the general fund
13 in the state treasury.

14 ~~5.4.~~ The attorney general shall deposit ~~three~~six percent of the total taxes, less refunds,
15 collected under this section into a gaming and excise tax allocation fund. Pursuant to
16 legislative appropriation, moneys in the fund must be distributed quarterly to cities and
17 counties in proportion to the taxes collected under this section from licensed
18 organizations conducting games within each city, for sites within city limits, or within
19 each county, for sites outside city limits. If a city or county allocation under this
20 subsection is less than two hundred dollars, that city or county is not entitled to receive
21 a payment for the quarter and the undistributed amount must be included in the total
22 amount to be distributed to other cities and counties for the quarter.

23 **SECTION 4. AMENDMENT.** Section 53-06.1-12.3 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **53-06.1-12.3. Interest, penalty, and estimated tax.**

26 1. Assessment of interest. If a licensed organization does not pay tax due by the original
27 date of a tax return, or if additional tax is due based on an audit or math verification of
28 the return and it is not paid by the original due date of the return, the organization shall
29 pay interest on the tax at the rate of twelve percent per annum computed from the
30 original due date of the return through the date the tax is paid.

- 1 2. Assessment of penalty. If a licensed organization does not pay tax due on a tax return
2 by the original or extended due date of the return, or if additional tax is due based on
3 an audit or math verification of the return and it is not paid by the original or extended
4 due date of the return, the organization shall pay a penalty of five percent of the tax, or
5 twenty-five dollars, whichever is greater. If an organization does not file a tax return by
6 the original or extended due date of the return, the organization shall pay a penalty of
7 five percent of the tax, or twenty-five dollars, whichever is greater, for each month or
8 fraction of a month during which the return is not filed, not exceeding a total of
9 twenty-five percent.
- 10 3. The attorney general may require a licensed organization to make monthly estimated
11 gaming ~~and excise~~ tax payments if the attorney general determines that the
12 organization is in poor financial condition. If an organization fails to pay any tax or
13 estimated tax, interest, or penalty by the original due date or date set by the attorney
14 general, the attorney general may bring court action to collect it and may suspend the
15 organization's license. The attorney general may for good cause waive all or part of
16 any interest or penalty and may waive any minimal tax.
- 17 4. If a licensed organization has failed to file a tax return, has been notified by the
18 attorney general of the delinquency, and refuses or neglects within thirty days after the
19 notice to file a proper return, the attorney general shall determine the adjusted gross
20 proceeds and gaming ~~and excise taxes~~tax due according to the best information
21 available and assess the ~~taxes~~tax at not more than double the amount. Interest and
22 penalty also must be assessed.
- 23 5. The attorney general may authorize a licensed organization to pay any delinquent tax,
24 interest, or penalty on an installment plan and may set any qualifying conditions.

25 **SECTION 5. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING**

26 **ORGANIZATION ELIGIBILITY.** During the 2011-12 interim, the legislative management shall
27 consider studying the eligibility requirements for the veterans', charitable, educational, religious,
28 fraternal, civic and service, public safety, and public-spirited organizations that conduct
29 charitable gaming. The legislative management shall report its findings and recommendations,
30 together with any legislation required to implement the recommendations, to the sixty-third
31 legislative assembly.