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Sixty-second
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED SENATE BILL NO. 2042

Introduced by

Legislative Management

(Judiciary Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

~~proceeds in excess of two hundred thousand dollars per quarter. In addition, an organization may deduct as an allowable expense:~~

~~a. Two and one-half percent of the gross proceeds of pull tabs.~~

~~b. Capital expenditures for security or video surveillance equipment used for controlling games if the equipment is required by section 53-06.1-10 or authorized by rule, and it is approved by the attorney general.~~

~~c. If an organization's total actual expenses exceed the allowable expenses provided by this subsection, the organization may also deduct the expenses up to two additional percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter~~.

3. Cash shorts incurred in games and interest and penalty are classified as expenses.

4. For a site where bingo is conducted:

   a. ~~Except under subdivision c, if~~<u>If</u> bingo is the primary game, the monthly rent must be reasonable.

   b. If bingo is not the primary game, but is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.

   ~~c. If bingo is conducted through a dispensing device and no other game is conducted, the monthly rent may not exceed two hundred seventy-five dollars.~~

5. For a site where bingo is not the primary game:

   a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. For each twenty-one table with a wager greater than five dollars, an additional amount up to one hundred dollars may be added to the monthly rent. If pull tabs is also conducted involving a jar bar or dispensing device, but not both, the monthly rent for pull tabs may not exceed an additional one hundred seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed an additional two hundred dollars.

   b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving a jar bar or dispensing device, but not both, the monthly rent may not exceed two hundred seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed three hundred dollars.

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 is one percent of gross proceeds. The tax must be paid to the attorney general at the time tax returns are filed.

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

~~4.~~2. Except as provided in subsection ~~5~~3, the attorney general shall deposit the gaming ~~and excise taxes~~tax, monetary fines, and interest and penalties collected in the general fund in the state treasury.

~~5.~~3. The attorney general shall deposit ~~three~~ten 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 4. AMENDMENT. Section 53-06.1-12.3 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Assessment of interest. If a licensed organization does not pay tax due by the original date of a tax return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original due date of the return, the organization shall pay interest on the tax at the rate of twelve percent per annum computed from the original due date of the return through the date the tax is paid.
2. Assessment of penalty. If a licensed organization does not pay tax due on a tax return by the original or extended due date of the return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater. If an organization does not file a tax return by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater, for each month or fraction of a month during which the return is not filed, not exceeding a total of twenty-five percent.
3. The attorney general may require a licensed organization to make monthly estimated gaming ~~and excise~~ tax payments if the attorney general determines that the organization is in poor financial condition. If an organization fails to pay any tax or estimated tax, interest, or penalty by the original due date or date set by the attorney general, the attorney general may bring court action to collect it and may suspend the

organization's license. The attorney general may for good cause waive all or part of any interest or penalty and may waive any minimal tax.

4. If a licensed organization has failed to file a tax return, has been notified by the attorney general of the delinquency, and refuses or neglects within thirty days after the notice to file a proper return, the attorney general shall determine the adjusted gross proceeds and gaming ~~and excise taxes~~tax due according to the best information available and assess the ~~taxes~~tax at not more than double the amount. Interest and penalty also must be assessed.

5. The attorney general may authorize a licensed organization to pay any delinquent tax, interest, or penalty on an installment plan and may set any qualifying conditions.

SECTION 5. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING ORGANIZATION ELIGIBILITY. During the 2011-12 interim, the legislative management shall consider studying the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 6. EFFECTIVE DATE. Sections 1 through 4 of this Act are effective January 1, 2012.