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Sixty-second Legislative Assembly of North Dakota

Introduced by

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FIRST DRAFT:

Prepared by the Legislative Council staff for the Judiciary Committee

September 2010

- 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.

4 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:
 - "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, bingo cards excise tax, pull tab excise 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:
- 12 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:

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

may not exceed three hundred dollars.

1	SEC	CTION 3. AMENDMENT. Section 53-06.1-12 of the North Dakota Century Code is
2	amended a	nd reenacted as follows:
3	53-0	06.1-12. Gaming and excise taxes - Exception tax - Deposits and allocations.
4	1.	A gaming tax is imposed on the total adjusted gross proceeds earned <u>received</u> by
5		a licensed organization in a quarter and it must be computed and paid to the
6		attorney general on a quarterly basis on the tax return. This tax must be paid from
7		adjusted gross proceeds and is not part of the allowable expenses. The tax rates
8		are:
9		a. On adjusted gross proceeds not exceeding two hundred thousand dollars, a
10		tax of five percent.
11		b. On adjusted gross proceeds exceeding two hundred thousand dollars but not
12		exceeding four hundred thousand dollars, a tax of ten percent.
13		e. On adjusted gross proceeds exceeding four hundred thousand dollars but not
14		exceeding six hundred thousand dollars, a tax of fifteen percent.
15		d. On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of
16		twenty percent.
17	2.	Except as provided in subsection 3, in addition to any other tax provided by law
18		and in place of sales or use taxes, there is imposed on a licensed organization an
19		excise tax of three percent on the gross proceeds from the sale at retail of pull tabs
20		and three percent on the gross proceeds from the sale at retail of bingo cards to
21		final users. This includes pull tabs or bingo cards provided to a player in exchange
22		for redeemed winning pull tabs or bingo cards rate is one percent of gross
23		proceeds. The tax must be paid to the attorney general at the time tax returns are
24		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. <u>2.</u>	Except as provided in subsection $\frac{5}{2}$, the attorney general shall deposit $\underline{\text{the}}$
29		gaming and excise taxes tax, monetary fines, and interest and penalties collected
30		in the general fund in the state treasury.

5. 3. The attorney general shall deposit three 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.