

**SENATE BILL NO. 2193**

Introduced by

Senators Tallackson, Trenbeath

Representatives Aarsvold, Belter

1 A BILL for an Act to create and enact a new section to chapter 57-38 of the North Dakota  
2 Century Code, relating to income tax withholding from certain pension payments; and to provide  
3 an effective date.

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

5 **SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is  
6 created and enacted as follows:

7 **Withholding from pensions.**

- 8 1. The definitions in Internal Revenue Code section 3405 [26 U.S.C. 3405] apply in  
9 this section. In addition:
- 10 a. "Pension payer" means a payer or plan administrator with respect to a  
11 pension payment under Internal Revenue Code section 3405 [26 U.S.C.  
12 3405].
- 13 b. "Pension payment" means a periodic payment or a nonperiodic distribution as  
14 defined in Internal Revenue Code section 3405 [26 U.S.C. 3405].
- 15 2. A pension payer required to withhold federal taxes under Internal Revenue Code  
16 section 3405 [26 U.S.C. 3405] on a pension payment to a resident of this state  
17 must deduct and withhold from the payment the state income taxes payable on the  
18 payment. Liability for withholding and paying taxes under this section on a pension  
19 payment falls on the person who would be liable under Internal Revenue Code  
20 section 3405 [26 U.S.C. 3405] for withholding federal taxes on the payment.
- 21 3. Except as otherwise provided in this section, the provisions of this chapter apply to  
22 a pension payer's pension payment to a resident of this state as if it were an  
23 employer's payment of wages to an employee. If a pension payer has more than

1           one arrangement under which it may make pension payments to a resident of this  
2           state, each arrangement must be treated separately under this section.

3           4. In the case of a periodic payment, the pension payer must withhold the amount  
4           that would be required to be withheld under this chapter if the payment were a  
5           payment of wages by an employer to an employee for the appropriate payroll  
6           period. If the recipient of periodic payments fails to file an exemption certificate,  
7           the pension payer must compute the amount to be withheld as if the recipient were  
8           a married individual claiming three withholding exemptions. In the case of a  
9           nonperiodic distribution, the pension payer must withhold taxes equal to four  
10          percent of the nonperiodic distribution.

11          5. The recipient of a pension payment may elect not to have taxes withheld under this  
12          section to the extent permitted by Internal Revenue Code section 3405 [26 U.S.C.  
13          3405]. The election must be in the form required by the tax commissioner. In the  
14          case of periodic payments, the election remains in effect until revoked by the  
15          recipient. In the case of a nonperiodic distribution, the election applies on a  
16          distribution-by-distribution basis unless it meets conditions prescribed by the tax  
17          commissioner for it to apply to subsequent nonperiodic distributions by the pension  
18          payer.

19                 A pension payer must notify each recipient of the right to elect not to have  
20                 taxes withheld under this section. The notice must comply with the requirements of  
21                 Internal Revenue Code section 3405 [26 U.S.C. 3405] and any additional  
22                 requirements prescribed by the tax commissioner.

23                 A recipient's election not to have taxes withheld under this section is void if  
24                 the recipient fails to furnish the recipient's tax identification number to the pension  
25                 payer, or the tax commissioner has notified the pension payer that the tax  
26                 identification number furnished by the recipient is incorrect.

27          6. This section does not apply to the following pension payments:

28           a. A pension payment that is wages under this chapter.

29           b. Any portion of a pension payment that meets both of the following conditions:

30                 (1) It is not a distribution or payment from an individual retirement plan as  
31                 defined in Internal Revenue Code section 7701 [26 U.S.C. 7701].

1                   (2)    The pension payer reasonably believes it is not taxable to the recipient  
2                                   under this chapter.

3                   c.    A distribution described in Internal Revenue Code section 404(k)(2)  
4                                   [26 U.S.C. 404(k)(2)], relating to dividends on corporate securities.

5                   d.    A pension payment that consists only of securities of the recipient's employer  
6                                   corporation plus cash not in excess of two hundred dollars in lieu of securities  
7                                   of the employer corporation.

8                   **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
9   December 31, 2005.