

# **Chapter 39.50**

## **Tipp City Income Tax Ordinance**

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### 39.50A PURPOSE

1. To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City of Tipp City, there shall be, and is hereby levied, a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.
2. To provide funds for capital improvement purposes for the City of Tipp City, there shall be, and is hereby levied a tax on salaries, wages, commissions, and other compensation, and on net profits as herein provided.

### 39.50B DEFINITIONS

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning.

1. **ADMINISTRATOR OF TAXATION (ALSO REFERRED TO AS ADMINISTRATOR)** - The Administrator of Taxation of the City of Tipp City, Ohio or the person executing the duties of the aforesaid administrator of Taxation.
2. **ASSOCIATION** - A partnership, limited partnership, limited partnership association, professional association, partnership with limited liability, limited liability company, unincorporated association, business trust, real estate investment trust, joint venture, or any other form of unincorporated enterprise, owned by two (2) or more persons.
3. **BOARD OF REVIEW** - The Board created by and constituted as provided in SECTION 39.50M(1) of this chapter.
4. **BOARD OF TAX APPEALS** - The Board created by and constituted as provided in SECTION 39.50M(2) of this Ordinance.
5. **BUSINESS** - An enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation, trust, or any other entity.
6. **CORPORATION** - A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country, or dependency.
7. **DOMICILE** – A principal residence that the taxpayer intends to use for an indefinite time and to which whenever they are absent they intend to return. A taxpayer has only one domicile even though they may have more than one residence.
8. **EMPLOYEE** - One who works for wages, salary, commission or other type of compensation in the service of an employer.
9. **EMPLOYER** - An individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, having a place of business or doing business with the City of Tipp City and who or that employs one (1) or more persons on a salary, wage, commission, or other compensation basis.

10. **FISCAL YEAR** - An accounting period of twelve (12) months or less ending on any day other than December 31st.
11. **FORM 2106** – Internal Revenue Service Form 2106 (or whatever form the IRS uses for this purpose) filed by a taxpayer pursuant to the Internal Revenue Code.
12. **GENERIC FORM**– An electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation’s tax on income.
13. **GROSS RECEIPTS** - The total income from any source whatsoever.
14. **INTANGIBLE INCOME** – Income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code.
15. **INTERNAL REVENUE CODE** – The Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
16. **INTERNET** – The international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical sub network known as the World Wide Web.
17. **NET PROFIT** - A net gain from the operation of a business, profession, enterprise or other activity excluding capital gains and losses after provision for all ordinary and necessary expenses, paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, adjusted to the requirements of this chapter.
18. **NON-RESIDENT** - Any individual who is not a resident as herein defined.
19. **NON-RESIDENT UNINCORPORATED BUSINESS ENTITY** - An unincorporated business entity not having a place of business within the City of Tipp City.
20. **OTHER ACTIVITY** - Any undertaking, not otherwise specifically defined herein, which is normally entered into for profit, including, but not limited to, rental and personal property and a business conducted by a trust or guardianship estate.
21. **OTHER PAYER** – Any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.
22. **PERSON** - Every natural person, partnership, fiduciary, association or corporation. Whenever used in any section prescribing and imposing a penalty, the term “person” includes an officer or employee of a corporation, or a member, partner, or employee of an association, who as such officer, employee, partner, or member is under a duty to perform the act in respect of which the violation occurs.
23. **PLACE OF BUSINESS** - Any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of their regular employees regularly in attendance.
24. **RESIDENT** - A person, whether an individual, association, corporation or other entity domiciled in the City of Tipp City. Any person who maintains a place of abode within the City of Tipp City for a total of 183 days or more within any twelve (12) month period shall be deemed a resident.
25. **RESIDENT UNINCORPORATED BUSINESS ENTITY** - An unincorporated business entity having a place of business within the City of Tipp City.

26. **RETURN PREPARER** – Any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
27. **SCHEDULE C** – Internal Revenue Service Schedule C (or whatever schedule the IRS uses for this purpose) filed by a taxpayer pursuant to the Internal Revenue Code.
28. **TAXABLE INCOME** - Qualifying wages, salaries and other compensation paid by an employer or employers before any deductions, other than ordinary and necessary business expenses in the same manner as provided by the Internal Revenue Code, and/or net profits as herein defined.
29. **TAXABLE YEAR** - The calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter and, in the case of a return for fractional part of a year, the period for which such return is required to be made. Unless approved by the Administrator, the taxable year of a wage earner shall be a calendar year.
30. **TAXPAYER** - A person, whether an individual, partnership, association, corporation or other entity, required hereunder to file a return or pay a tax.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

### 39.50C IMPOSITION OF TAX.

1. An annual tax for the purposes specified in 39.50A(1), hereof shall be imposed beginning January 1, 1973 at the rate of seven-tenths of one per cent (00.7%) per annum, and beginning October 1, 1981, an additional annual tax at the rate of one-tenth of one per cent (00.1%) per annum for the purposes specified in 39.50A(1) shall be imposed. Beginning October 1, 1981, an additional tax for the purpose specified in 39.50A(2), hereof, shall be imposed at the rate of two-tenths of one per cent (00.2%) per annum. Beginning July 1, 2011 and ending June 30, 2021, an additional tax for the purpose specified in 39.50A(2) hereof, shall be imposed at the rate of twenty-five hundredths of one percent (00.25%) per annum. Beginning January 1, 2013 and ending December 31, 2022, an additional tax for the purpose specified in 39.50A(2) hereof, shall be imposed at the rate of twenty-five hundredths of one percent (00.25%) per annum. All taxes herein shall be combined with the combined rate being one and one-half per cent (1.50%) per annum, and levied upon the following:
  - a. On all qualifying salaries, wages, commissions and other compensation received during the effective period of the chapter by residents of the City of Tipp City.
  - b. On all qualifying salaries, wages, commissions and other compensation received during the effective period of the chapter by non-residents for work done or services performed or rendered in the City of Tipp City.
  - c.
    1. On the portion attributable to the City of Tipp City of the net profits earned, and accrued or received during the effective period of the chapter of all resident associations, unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Tipp City.
    2. On the portion of the distributive share of the net profits earned, and accrued or received during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the City of Tipp City upon which the tax was not paid by the entity.
  - d.
    1. On the portion attributable to the City of Tipp City of the net profits earned, and accrued or received during the effective period of this chapter of all non-resident association, unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the City of Tipp City, whether or not such association or other unincorporated business entity has an office or place of business in the City of Tipp City.

2. On the portion of the distributive share of the net profits, earned, and accrued or received during the effective period of this chapter of a resident partner or owner of a non-resident association or other unincorporated business entity not attributable to the City of Tipp City on which the tax was not paid by the entity.
- e. On the portion attributable to the City of Tipp City of the net profits earned, and accrued or received during the effective period of this chapter of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Tipp City, whether or not such corporations have a place of business in the City of Tipp City
2. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City of Tipp City, in the absence of actual records, thereof, shall be determined as follows:

Multiply the entire net profits by a business allocation percentage to be the average ratio of:

- a. The average net book value of the real and tangible personal property owned or by the taxpayer in the business or profession in the City of Tipp City during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8).

- b. Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City of Tipp City to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.
- c. Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of Tipp City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.

As used in paragraph 2(c) of this Section, "sales made in the City of Tipp City" mean:

- a. All sales of tangible personal property which is delivered within the City of Tipp City regardless of where title passes if shipped or delivered from a stock of goods within the City of Tipp City.
  - b. All sales of tangible personal property which is delivered within the City of Tipp City regardless of where title passes even though transported from a point outside the City of Tipp City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Tipp City and the sales result from such solicitation or promotion.
  - c. All sales of tangible personal property which is shipped from a place within the City of Tipp City to purchasers outside of the City of Tipp City regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.
3. For the purpose of this Section, the taxable base shall be determined in accordance with Federal Tax interpretations, when applicable, and with the accounting method used by the taxpayer for Federal income taxes adjusted to the requirements of this chapter.

#### 4. CONSOLIDATED RETURNS

Filing of consolidated returns may be permitted or required in accordance with Rules and Regulations by the Administrator.

Allocation of income and deductions between related taxpayers; in the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in case any person operates a division branch factory, office, laboratory or activity with the City of Tipp City constituting a portion only of its total business, the Administrator may require such additional information as is deemed necessary to ascertain whether net profits are properly allocated to the City of Tipp City. If the Administrator finds net profits are not properly allocated to the City of Tipp City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, they shall make such allocation as is deemed appropriate to produce a fair and proper allocation of net profits to the City of Tipp City.

#### 5. EXCEPTIONS

The tax provided for herein shall not be levied upon:

1. Pay or allowances of active members of the Armed Forces of the United States, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.
2. Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.
3. Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
4. Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.
5. Personal earnings of all persons under sixteen (16) years of age.
6. Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars (\$1,000) may be subject to taxation. The payer of such compensation is not required to withhold Tipp City income tax from that compensation.
7. The income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code, except starting January 1, 2002, the income of an electric company or combined company, as defined in section 5727.01 of the Ohio Revised Code, may be taxed by a municipal corporation subject to Chapter 5745 of the Ohio Revised Code.
8. On and after January 1, 2001, compensation paid to a nonresident individual for personal services performed within the City of Tipp City, performs such personal services in the City of Tipp City on twelve (12) or fewer calendar days in which salary, wage, or compensation is earned in the calendar year, and if the individual is an employee, the principal place of business of the individual's employer is located outside the City of Tipp City, shall be exempt from the Tipp City income tax. This does not

apply to professional entertainers or professional athletes or to promoters of professional entertainment or sports events and their employers, as reasonably defined by the City of Tipp City.

9. Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the City of Tipp City is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business).
10. Alimony received.

#### **39.50D EFFECTIVE PERIOD**

1. The first seven-tenths of one per cent (00.7%) shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation received and shall be levied with respect to the net profits of businesses, professions or other activities earned, and accrued or received on and after January 1, 1973.
2. The next three-tenths of one per cent (00.3%) shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation received and shall be levied with respect to the net profits of businesses, professions or other activities earned, and accrued or received on and after October 1, 1981.
3. The next twenty-five hundredths of one percent (00.25%) shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation received and shall be levied with respect to the net profits of businesses, professions or other activities earned, and accrued or received on and after July 1, 2011 ending June 30, 2021.
4. The next twenty-five hundredths of one percent (00.25%) shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation received and shall be levied with respect to the net profits of businesses, professions or other activities earned, and accrued or received on and after January 1, 2013 ending December 31, 2022.
5. The total tax rate is one and one-half per cent (1.50%) on and after July 1, 2011 and until June 30, 2021 when it reverts to one and twenty-five hundredths of one percent (1.25%) and then until December 31, 2022 when it reverts to one percent (1.00%) which is an ongoing rate thereafter.

#### **39.50E RETURN AND PAYMENT OF TAX**

1. Each person who engages in business or other activity or whose salary, wage, commission or other compensation is subject to the tax imposed by this chapter, shall, whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the effective date of this chapter, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth (15<sup>th</sup>) day of the fourth month following the end of such fiscal year or period. The Administrator is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid to the Administrator may be accepted as the return required of an employee whose sole income, subject to tax under this chapter, is such salaries, wages, commissions or other compensation.
2. The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from the Administrator setting forth:
  - a) The aggregate amounts of salaries, wages, commissions and other compensation received and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to said tax; and

- b) The amount of the tax imposed by this chapter on such earnings and profits; and
  - c) Such other pertinent statements, information returns, or other information as the Administrator may require.
3. The Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return.
  4.
    1. The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the amount of taxes shown as due thereon; provided, however, that credit shall be allowed for:
      - a) Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of Section 39.50F of this chapter; and
      - b) Any portion of said tax which shall have been paid by the taxpayer pursuant to the provisions of Section 39.50G of this chapter; and
      - c) Credit to the extent allowed by Section 39.50O hereof for tax paid to another municipality
    2. Subject to the limitation contained in Section 39.50K of this chapter, any taxpayer who has overpaid the amount of tax to which the City of Tipp City is entitled under the provision of this chapter may have such overpayment applied against any subsequent liability hereunder or, at their election as indicated on the return, such overpayment (or part thereof) shall be refunded.
  5.
    - A. AMENDED RETURNS: Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and limitations contained in Section 39.50K and Section 39.50O. Such amended returns shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.
    - B. Within three (3) months from the final determination of any Federal, State, or other Municipal income tax liability affecting the taxpayer's City of Tipp City tax liability, such taxpayer shall make and file an amended City of Tipp City return showing income subject to the City of Tipp City tax based upon such final determination of Federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment.
  6. Information returns, schedules and statements required to support tax returns, which are incomplete without such information, shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be deemed to be a violation of this chapter. Provided, however, that the taxpayer shall have ten (10) days after notification by the Administrator, or their authorized representative, to file the items required by this paragraph,

### **39.50F COLLECTION AT SOURCE**

1.
  - A. Each employer shall at the time of the payment of any salary, wage, commission or other compensation deduct the tax referenced in Section 39.50C(1) related to the gross salaries, wages, commissions or other compensation due by the said employer to their employees who are subject to the provisions of this chapter. In making such deduction at the time of payment, the employer shall compute the tax to the nearest full cent so that mills of five (5) or more shall be increased to the next full cent and mills less than five (5) shall be dropped. No person shall be entitled to a refund merely because such rounding off of the tax results in an apparent overpayment based on his total earnings. Each employer shall, on or before the fifteenth (15<sup>th</sup>) day of each month, make a return and pay to the Administrator, the tax withheld during the preceding month. Provided however, the Administrator shall have the authority to approve the filing of returns and

payment of the tax withheld on a quarterly basis. In such case, the employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30, and December 31, make a return and pay to the Administrator the tax withheld during the preceding calendar quarter. Such approval for quarterly filings and payments may be withdrawn by the Administrator when it is to the best interest of the City of Tipp City to do so. The administrator shall provide by regulation, the manner in which such approval is to be granted or withdrawn.

B. The employer shall be liable for the payment of the tax, required to be deducted and withheld, whether or not such tax has in fact been withheld.

2. Such employer in collecting said tax shall be deemed to hold the same, until payment is made by such employer to the City of Tipp City, as Trustee for the benefit of the City of Tipp City and any such tax collected by such employer from his employees shall, until the same is paid to the City of Tipp City, be deemed a trust fund in the hands of such employer.
3. No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed exclusively in or about such person's residence, even though such residence is in the City of Tipp City, but such employee shall be subject to all of the requirements of this chapter.
4. On or before February 28 of each year, each employer shall file a withholding return on a form prescribed by and obtainable upon request from the Administrator setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year and the amount of tax withheld from their employees and such other information as may be required by the Rules and Regulations adopted by the Administrator.

### **39.50G DECLARATIONS**

1. Every person who anticipates the receipt of any taxable income which is not subject to Section 39.50F hereof, or who engages in any business, profession, enterprise, or activity subject to the tax imposed by Section 39.50C hereof, shall file a declaration setting forth such person's estimated taxable income together with any estimated tax due thereon, if any, provided, however, if a person's income is wholly from wages from which the tax will be withheld and remitted to the City of Tipp City in accordance with Section 39.50F hereof, such person need not file a declaration.
2. A. Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or within four (4) months after the date the taxpayer becomes subject to the provisions of this chapter.  
B. Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth (15<sup>th</sup>) day of the fourth month after the beginning of each fiscal year or period.
3. A. Such declaration shall be filed upon a form furnished by or obtainable upon request from the Administrator, provided however, credit shall be taken for the City of Tipp City tax to be withheld from any portion of such income to determine the estimated tax due. In accordance with the provisions at Section 39.50O hereof, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.  
B. The original declaration (or subsequent amendment thereof) may be amended at any time.  
C. An amended declaration must be filed and paid on or before January 31st, or the date fixed by regulation, if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by ten per cent (10%) or more. Returns filed that do not meet this requirement will be subject to the interest and penalty provisions of Section 39.50J X hereof.
4. For individuals, such declaration of net estimated tax to be paid to the City of Tipp City shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax less credit and at least a

similar amount shall be paid on or before the last day of the seventh (July), tenth (October) and thirteenth (January) months after the beginning of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

5.
  1. For non-individuals (Corporations, Partnerships, S Corps, LLC's, etc.), such declaration of net estimated tax to be paid to the City of Tipp City shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax less credit and at least a similar amount shall be paid on or before the fifteenth (15<sup>th</sup>) day of the sixth (6<sup>th</sup>), ninth (9<sup>th</sup>), and twelfth (12<sup>th</sup>) months after the beginning of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance show due thereon shall be paid in equal installments on or before the remaining payment dates.
  2. Provided further, however, that the last quarterly payment of estimated tax need not be made if the taxpayer files his final return and pays the balance of the tax due thereon within forty-five (45) days following the end of his taxable year.
6. On or before the fifteenth (15<sup>th</sup>) day of the fourth month of the calendar or fiscal year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City of Tipp City shall be paid therewith in accordance with the provisions of Section 39.50E hereof.

#### **39.50H DUTIES AND POWERS OF THE ADMINISTRATOR OF TAXATION**

1.
  - A. It shall be the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; and to report daily all monies so received.
  - B. It shall be the duty of the Administrator to enforce payment of all taxes owing the City of Tipp City, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.
2.
  - A. The Administrator is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.
  - B. The Administrator shall make electronic versions of any rules, regulations, or ordinances governing the income tax available to the public through the internet, and shall comply with the provisions of Ohio Revised Code Section 718.07.
3. In any case where a taxpayer or employer has failed to file a final return or has filed a return which does not show the proper amount of tax due, the Administrator may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:
  - A. General Provisions.
    1. If the Administrator determines that any taxpayer subject to the provisions of this chapter has a tax liability for which they have filed no return or has filed an incorrect return and/or has failed to pay the full amount of tax due, the Administrator shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.

- a. Such proposed assessment shall be served upon the taxpayer in person or by mailing to his last known address. Proof of mailing furnished by the U.S. Post Office shall be presumptive proof of receipt thereof by the addressee.
  - b. A taxpayer may, within fifteen (15) days after the date the proposed assessment was served or mailed, file a written protest with the Administrator. Within fifteen (15) days after receipt of the protest, the Administrator shall give the taxpayer an opportunity to be heard; provided, further, that the Administrator may extend the date of hearing for good cause shown. After the hearing the Administrator shall withdraw the assessment or shall adjust or reaffirm the assessment and it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final fifteen (15) days after being served.
2. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment.
  - a. A taxpayer shall have thirty (30) days after the date the final assessment was served or mailed within which to file written notice of appeal with the Board of Tax Appeals. The request shall state with particularity why the decision should be deemed incorrect or unlawful. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Tax Appeals" and mailed or delivered to the Administrator who shall, within five (5) days after receipt thereof, deliver such appeal to the Chairman of the Board of Tax Appeals or, if the Chairman is not available, to the Vice-Chairman.
  - b. The imposition of penalty and interest as prescribed in this chapter is not a sole basis for an appeal.
  - c. The Board of Tax Appeals, upon receipt of a notice of appeal, shall within fifteen (15) days notify the Administrator thereof who shall forward within fifteen (15) days to the Board a certified transcript of all actions taken with respect to said final assessment. Such transcript shall be open to inspection by the appellant and their counsel.
  - d. Any taxpayer, against whom a final assessment has been issued and who has filed a notice of appeal, shall be granted a hearing by the Board of Tax Appeals within forty-five (45) days after the Board receives the request, unless the taxpayer waives a hearing. At such hearing the appellant and the Administrator shall be given opportunity to present evidence relating to said final assessment. The taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant, or other representative. Within ninety (90) days after the conclusion of such hearing, the Board of Tax Appeals shall affirm, reverse or modify the said final assessment and shall furnish a copy of its decision within fifteen (15) days after issuing a decision in respect thereof to the appellant and the Administrator. The appellant's copy of said decision shall be served in the same manner as herein provided for the serving of assessments.
3. When any taxpayer subject to the provisions of this chapter has filed a return indicating the amount of tax due and has failed to pay said tax to the Administrator as required by this chapter, the Administrator need not issue an assessment but may proceed under the provisions of Section 39.50K and Section 39.50L of this chapter.

## **B. Provisions Affecting Employers**

1. If the Administrator determines that an employer subject to the provisions of this chapter has failed to file a return for tax withheld and/or has failed to pay to the Administrator the full amount of said taxes, the Administrator shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon, and the provisions of Paragraphs 3.A(1) and 3.A(2) of this Section shall then apply.

2. If the Administrator determines that an employer subject to the provisions of this chapter has failed to withhold tax, the Administrator shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of Paragraphs 3.A(1) and 3.A(2) of this Section shall then apply.
3. When an employer subject to the provisions of this chapter has filed a return indicating the amount of tax withheld and has failed to pay said tax to the Administrator as required by this chapter, the Administrator may proceed under the provisions of Section 39.50K and Section 39.50L of this chapter and need not issue an assessment as provided in Paragraphs 3.B(1) and 3.B(2).
4. A. Any taxpayer or employer who has not filed a notice of appeal to the Board of Appeals from a final assessment issued against them shall pay the amount thereof within fifteen (15) days after service of such final assessment.  
  
B. Any taxpayer or employer who has filed a notice of appeal to the Board of Tax Appeals from a final assessment issued against them shall pay the amount determined to be due by the Board of Tax Appeals within fifteen (15) days after service of their copy of the decision of the Board.
5. The Administrator shall have the authority, when requested by the taxpayer and for good cause shown, to extend the time of making and filing any return whenever they deem it necessary to do so, but not to exceed a period of six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return.
6. When an application for deferred payment of tax due is filed by a taxpayer, the Administrator may authorize partial payments of unpaid taxes when, in their judgment, such deferred payments are the best means of accomplishing the intent of this chapter. Provided, however, that the Administrator shall not authorize an extension of time for the payment of said taxes due for more than six (6) months beyond the date of the filing of the application.

**39.50I INVESTIGATIVE POWERS OF THE ADMINISTRATOR – PENALTY FOR  
DIVULGING CONFIDENTIAL INFORMATION.**

1. The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and copies of Federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Administrator believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish within ten (10) days following a written request by the Administrator, or their duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.
2. The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before them and may examine such persons, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and copies of Federal income tax returns and the attendance of all persons before them, whether as parties or witnesses, whenever it is believed such persons have knowledge of such income or information pertinent to such inquiry.
3. The refusal to produce books, papers, records and copies of Federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this Section 39.50I or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 39.50L hereof.

4. Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, or except when ordered by a Court of competent jurisdiction. Any person divulging such information in violation of this chapter, shall, upon conviction thereof, be deemed guilty of a first degree misdemeanor and shall be subject to a fine or penalty of not more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the City of Tipp City who violates the provisions of Section 39.50I relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

5. Every taxpayer shall retain all records necessary to compute their tax liability for a period of five (5) years from the date their return is filed, or withholding taxes are paid.

#### **39.50J INTEREST AND PENALTIES.**

1. All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid ten (10) days after they become due shall bear interest at the rate of one per cent (1.0%) per month or fraction thereof.
2. In addition to interest as provided in Paragraph A of this Section, penalties based on the unpaid tax are hereby imposed as follows:
  - a. For failure to pay taxes due, a one-time penalty of ten per cent (10%) of the tax due.
  - b. For failure to remit taxes withheld from employees; a one-time penalty of ten per cent (10%) of the tax due.
  - c. Failure to file a Tipp City Tax Return by the due date shall result in a late filing penalty fee of \$20.00 being assessed. This fee is in addition to any interest and penalties provided for in Parts 1 and 2 of this Section:
    1. The failure to file penalty of \$20.00 is waived for first-time filers.
    2. The Administrator may waive, either in part or in whole, the late filing fee upon written request of the taxpayer and for such unusual circumstance as may be deemed appropriate.
  - d. Where the taxpayer has failed to file a declaration on which they have estimated and paid a tax equal to or greater than the tax paid for the previous year, or has failed to file a declaration on which they have estimated and paid tax equal to or greater than ninety per cent (90%) of the actual tax for the year, or has failed to file a final return and pay the total tax on or before the end of the month following the end of their taxable year; ten per cent (10%) of the difference between ninety per cent (90%) of the actual tax for the year and the amount paid through withholding or declaration.
  - e. Except in the case of fraud, the penalty shall not exceed fifty per cent (50%) of the unpaid tax.
3. Costs of collection activities outside the normal activities of the Tax Department, including but not limited to use of a collection agency, costs of certified collection letters, and costs associated with pursuit of delinquent accounts through the court system, shall be assessed to the taxpayer and collected with other balances arising from this chapter.
4. **EXCEPTIONS.** A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator, and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, providing an amended return is

filed and the additional tax is paid within three (3) months after final determination of the Federal Tax liability.

5. The Administrator, with the approval of the Finance Director, may abate penalty charges, either in part or in whole, upon written request of the taxpayer when the amount of said penalty is under \$100 per occurrence and for such circumstances as they may deem appropriate.
6. Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both.
7. Provided, however, that in no case shall penalty and interest charges be levied when the total of such penalty and interest amounts to less than five dollars and one cent (\$5.01).
8. Any person required to withhold the tax who knowingly fails to withhold such tax, or pay over tax or knowingly attempt to, in any manner, evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not withheld, or not paid over. No other penalty under this Section 39.50J shall be applied to any offense to which this penalty is applied.
9. Interest, but no penalty, will be assessed where an extension to pay has been granted by the Administrator and the final tax paid within the period as extended. This extension to pay is not to be confused with an extension of the annual return filing deadline. Tax amounts due are not automatically extended even if a taxpayer requests an extension of the annual return filing date.

#### **39.50K COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS.**

1. All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of twenty-five per cent (25%) of income subject to this tax, overstatement of twenty-five per cent (25%) of tax credits or failure to file a final return, an additional assessment shall not be made after three (3) years from the time the return was due or filed, whichever is later, provided, however, in those cases in which a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitation, the period within which an additional assessment may be made by the Administrator shall be one (1) year from the time of the final determination of the Federal tax liability.
2. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date when such payment was made or the return was due, or within three (3) months after final determination of the Federal tax liability, whichever is later.
3. Amounts of less than Five Dollars and one cent (\$5.01) shall not be refunded or assessed or pursued for collections unless such assessment results from income which the taxpayer has failed to report.

#### **39.50L CRIMINAL VIOLATIONS AND PENALTIES.**

1. No person shall:
  - a) Fail, neglect or refuse to make any return or declaration required by this chapter; or
  - b) Make any incomplete, false or fraudulent return; or
  - c) Knowingly fail or refuse to pay the tax, penalties or interest imposed by this chapter; or
  - d) Knowingly fail or refuse to withhold the tax from their employees and remit such withholding to the Administrator; or

- e) Refuse to permit the Administrator or any duly authorized agent or employee to examine their or their employer's books, records, papers and copies of Federal income tax returns relating to the income or net profit of a taxpayer; or
  - f) Fail to appear before the Administrator and to produce their or their employer's books, records, papers or copies of Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
  - g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
  - h) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator; or
  - i) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter;
2. Any person who violates Section 39.50L(1) above shall be guilty of a first degree misdemeanor and shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned not more than six (6) months or both, for each offense.
3. A. Any person subject to the provisions of Sections 39.50A through 39.50R inclusive, of this chapter, who has failed to file or has filed an incorrect return and/or has failed to pay the full amount of tax due, shall not be deemed to have committed an offense punishable under the provisions of this Section until the assessment issued against them under the provisions of Section 39.50H of this chapter, has become due and payable.
- B. Any person who has filed a return under the provisions of Sections 39.50A through 39.50R inclusive, of this chapter, indicating the amount of tax due, and has failed to pay said tax, together with any penalties or interest that may have accrued thereon, shall not be deemed to have committed an offense for having knowingly failed to pay the tax, penalties or interest due as provided in Paragraph 1-c above, until the date of the filing of such return.
4. The term "person" as used in this Section shall, in addition to the meaning prescribed in Section 39.50B of this chapter, include in the case of an association or corporation not having any partner, member or officer within the City of Tipp City, any employee or agent of such association or corporation who can be found within the corporate limits of the City of Tipp City.
5. All prosecutions under this Section must be commenced within five (5) years from the time of the offense complained of except in the case of failure to file a final return or in the case of filing a false or fraudulent return, or failure to pay the tax due, in which event the limitation of time within which prosecution must be commenced shall be ten (10) years from the date the return was due or the date the false or fraudulent return was filed or the tax was due, whichever is later.
6. The failure of any employer or taxpayer or person to receive or procure a return, declaration or other required form shall not excuse them from making any information return, return or declaration, from filing such forms, or from paying the tax.

**39.50M BOARD OF REVIEW AND BOARD OF TAX APPEALS.**

**1. Board of Review**

- a. A Board of Review, consisting of the City Solicitor as Chairman, the City Manager as Secretary and the President of Council is hereby created. A majority of the members of the Board shall constitute a quorum.

- b. The Board shall adopt its own procedural rules and shall keep a record of its proceedings. All hearings of the Board shall be conducted privately and the provisions of Section 39.50I of this chapter with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be presented to the Board of Review.
- c. The Board shall have the authority, upon request of the Administrator, to modify in whole or in part, any assessment of tax, penalty or interest, required to be made by this chapter. In addition, the Board may authorize the Administrator to accept partial payments for a period in excess of the time authorized in Section 39.50H of this chapter.
- d. All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this chapter, must be approved by the Board of Review before the same become effective.

## 2. Board of Tax Appeals

- a. A Board of Tax appeals, consisting of three (3) representative citizens of the City of Tipp City, not otherwise employed by the City of Tipp City, to be appointed by the City Council for a term of one year, hereby is created.
- b. One of the members of the Board, appointed by the City Council, shall be chosen by the members as Chairman of the Board and all may receive per diem compensation to be fixed by the City Council. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its proceedings. All hearings by the board shall be conducted privately unless the taxpayer specifically requests in writing, a public hearing. Unless such written request is made, the provisions of Section 39.50I hereof with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard on appeal before the Board.
- c. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such assessment, ruling or decision, or any part thereof, made by the Administrator from which an appeal has been filed as provided in Section 39.50H of this chapter.

## **39.50N ALLOCATION OF FUNDS,**

- 1. The funds collected under the provisions of this chapter shall be allocated in such manner as prescribed by ordinance adopted by the City Council of the City of Tipp City.

## **39.50O CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.**

- 1. Where a resident of the City of Tipp City is subject to a municipal income tax in another municipality they shall not pay a total municipal income tax on the same income greater than the tax imposed at the highest rate to which they are subject.
- 2. Every individual taxpayer who resides in the City of Tipp City who receives net profits, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside the City of Tipp City, if they have paid a municipal income tax on the same income taxable under this chapter to another municipality, shall be allowed a credit against the tax imposed by this chapter of the amount so paid by them or on their behalf to such other municipality. The credit shall not exceed the tax assessed by this chapter on such income earned in such other municipality or municipalities where such tax is paid. If a taxpayer receives a refund from another Municipality, the credit allowed by Tipp City must be reduced proportionately.

3. A claim for refund or credit under this section shall be made in such manner as the Administrator may by regulation provide.

**39.50P JOINT ECONOMIC DEVELOPMENT DISTRICTS (J.E.D.D.) (Credits For Tax Paid to Another Municipality)**

1. Credit for tax paid to another municipality or to a Joint Economic Development District.
  - a. Where a resident of Tipp City is subject to a municipal income tax in another municipality or in a Joint Economic Development District, they shall not pay a total municipal income tax on the same income greater than the tax imposed at a higher rate.
  - b. Every taxpayer who resides in the city but receives net profits, salaries, wages, other compensation, and other income from a resident or nonresident business entity or association of which they are a partner or owner, for work done or services performed or rendered outside of the City of Tipp City, if it is made to appear that they or such business entity has paid a municipal or a Joint Economic Development District income tax on or with respect to the same income taxable under this chapter to another municipality or to a Joint Economic Development District, shall be allowed a credit against the tax imposed by this chapter in the amount so paid by them, in their behalf, or by such business entity, to the other municipality or to a Joint Economic Development District. In no event, however, shall any municipal income tax or any Joint Economic Development District income tax to the extent paid to another municipality or to a Joint Economic Development District and allowed as a credit hereunder be deductible in computing the net profit of such taxpayer or such business entity. In addition, the credit shall not exceed the tax assessed by this chapter on income earned in such other municipality or municipalities or Joint Economic Development District(s) where the tax is paid.
  - c. A claim for refund or credit under this section shall be made in such a manner as the Tax Administrator may, by regulation, provide.
2. Requirements For Joint Economic Development Districts.
  - a. Specific provisions of this chapter may be modified as they apply to Joint Economic Development Districts if the modifications are passed by Council in an ordinance which either specifically approves a Joint Economic Development District Contract or specifically amends this chapter.

**39.50Q SAVING CLAUSE.**

This chapter shall not apply to any person, firm, or corporation, or income, as to whom, or as to which it is beyond the power of the City Council to impose the tax herein provided for. If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the Electors of the City of Tipp City that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**39.50R COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.**

1. This chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of said taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of said taxes or for the

punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Section 39.50K and Section 39.50L hereof.

2. Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Section 39.50E and Section 39.50F of this chapter as though the same were continuing.

**39.50S EFFECTIVE DATE**

This chapter shall be in full force and effect from and after the earliest period allowed by law.