



# *Pennsylvania Tax Reports*

*December 29, 2004*

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## ***EMPLOYMENT LOCALITY MUST DISTRIBUTE EARNED INCOME TAXES***

A panel of the Commonwealth Court held that a locality that imposes an earned income tax on an employee working within the locality must remit the collected tax to a locality that imposes a tax on the employee as a resident; the court rejected the argument that a taxpayer must pay tax to both the employment locality and the residence locality and then apply for a refund from the employment locality. *Commodore Perry School District v. City of Meadville*, No. 367 C.D. 2004 (Pa. Cmwlth. Dec. 7, 2004). The Local Tax Enabling Act authorizes both a locality in which a person works and a locality in which a person lives to impose an earned income tax. Localities are generally municipalities but also include certain school districts. The Act provides that if both localities impose the tax, the tax imposed by the residence locality takes precedence. Certain residential localities brought suit against certain employment localities to require the employment localities to forward collected tax to the residential localities and to prohibit the employment localities from charging a fee for the collection function. The court held that under the Local Tax Enabling Act, the employment localities are required to forward the tax, and that the statutory scheme does not contemplate requiring a taxpayer to pay twice and apply for a refund from the employment locality. The court further held that an employment locality cannot collect a fee. Generally, a fee cannot be imposed in the absence of statutory authority. *Brown v. LeSuer*, 27 A.2d 754 (Pa. Super. 1942). Since no fee was expressly authorized by the Local Tax Enabling Act, none could be supplied by inference, and therefore no fee could be charged by an employment locality for collecting and distributing tax to a residence locality.