

ATTESTATION ENGAGEMENT

Township of Jackson
Dauphin County, Pennsylvania
22-205
Liquid Fuels Tax Fund
For the Period
January 1, 2012 to December 31, 2012

October 2014



Commonwealth of Pennsylvania
Department of the Auditor General
Eugene A. DePasquale • Auditor General



Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
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EUGENE A. DePASQUALE
AUDITOR GENERAL

Independent Auditor's Report

The Honorable Barry J. Schoch, P.E.
Secretary
Department of Transportation
Harrisburg, PA 17120

We examined the accompanying Form MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Township of Jackson, Dauphin County, for the period January 1, 2012 to December 31, 2012. The municipality's management is responsible for the Form MS-965. Our responsibility is to express an opinion on the Form MS-965 With Adjustments based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. An examination includes examining, on a test basis, evidence supporting the Township of Jackson, Dauphin County's Form MS-965 for the period January 1, 2012 to December 31, 2012 and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

We are mandated by Section 403 of *The Fiscal Code*, 72 P.S. § 403, to audit each municipality's Liquid Fuels Tax Fund to ensure that funds received are expended in accordance with applicable laws and regulations. *Government Auditing Standards* issued by the Comptroller General of the United States include attestation engagements as a separate type of audit. An attestation engagement performed pursuant to *Government Auditing Standards* involves additional standards that exceed the standards provided by the American Institute of Certified Public Accountants. Accordingly, this attestation engagement complies with both *Government Auditing Standards* and Section 403 of *The Fiscal Code*.

Independent Auditor's Report (Continued)

The Finding in this revised report no longer states that the township supervisor was also the roadmaster during the examination period. Additionally, we modified our auditor's conclusion in the Finding to reiterate that the township supervisor did not disclose his financial interest in the contract and he failed to abstain from voting to approve the contract and a change order to the contract. As discussed in the Finding and Recommendations section of this report, the township expended \$213,280.00 from the Liquid Fuels Tax Fund for the purchase of superpave from a vendor for project No. 12-22205-12. The township supervisor owned a trucking company that was subcontracted as an independent hauler for the vendor. Due to township supervisor's financial interest in the contract and the supervisor's failure to abstain from voting to approve the contract, this contract appears to violate The Public Official and Employee Ethics Act.

In our opinion, except for the matter discussed in the preceding paragraph, the Form MS-965 With Adjustments presents, in all material respects, the information required by the Pennsylvania Department of Transportation for the Liquid Fuels Tax Fund of the Township of Jackson, Dauphin County, for the period January 1, 2012 to December 31, 2012, in conformity with the criteria set forth in Note 1.

In accordance with *Government Auditing Standards*, we are required to report findings of significant deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Form MS-965 and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether the Form MS-965 are presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over reporting on the Form MS-965 or on compliance and other matters; accordingly, we express no such opinions.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the Township of Jackson, Dauphin County's ability to initiate, authorize, record, process, or report data reliably in accordance with the applicable criteria such that there is more than a remote likelihood that a misstatement of the Township of Jackson, Dauphin County's Form MS-965 that is more than inconsequential will not be prevented or detected by the Township of Jackson, Dauphin County's internal control.

Independent Auditor's Report (Continued)

A material weakness is a significant deficiency or combination of significant deficiencies that results in more than a remote likelihood that a material misstatement of the Form MS-965 will not be prevented or detected by the Township of Jackson, Dauphin County's internal control.

Our consideration of internal control over reporting on the Form MS-965 was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any significant deficiencies or material weaknesses, as defined above, in internal control over reporting on the Form MS-965.

The results of our tests disclosed the following instance of noncompliance that is required to be reported under *Government Auditing Standards*:

- Related Party Transaction And Payment Of Invoice In Excess Of Contract Price.

This report is intended solely for the information and use of the Pennsylvania Department of Transportation and the management of the Township of Jackson, Dauphin County, and is not intended to be and should not be used by anyone other than these specified parties.



Eugene A. DePasquale
Auditor General

January 28, 2014

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TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

Background

The Liquid Fuels Tax Municipal Allocation Law, Title 72 P.S. § 2615.5, provides municipalities other than counties (townships, boroughs, cities, towns, home rule, and optional plan governments) with an annual allocation of liquid fuels taxes from the state's Motor License Fund to be used for the maintenance and repair of streets, roads, and bridges for which the municipality is responsible. The allocation of these funds to municipalities is based: (1) 50 percent on the municipality's proportion of local road mileage to the total local road mileage in the state, and (2) 50 percent on the proportion of a municipality's population to the total population in the state.

The Vehicle Code, Title 75 P.S. § 9511, provides municipalities with annual maintenance payments to be received from the Motor License Fund for functionally local highways that were transferred to a municipality from the Commonwealth of Pennsylvania.

Each municipality must deposit the Liquid Fuels Tax Fund money and annual maintenance payments that it receives into a special fund called the Municipal Liquid Fuels Tax Fund or State Fund. A municipality may not deposit any other monies into this fund except when the municipality does not have enough money in the special fund to meet the payments called for by its current annual budget for road and bridge purposes. In this case, the municipality may borrow money or transfer money from its General Fund to its Liquid Fuels Tax Fund.

The Department of Transportation has been given the regulatory authority for the administration of these funds. To qualify for its annual allocation, each municipality shall submit the following documents and information to the Department of Transportation:

1. Evidence that the treasurer is bonded in accordance with the law, or that its treasurer is a bank requiring no bond by January 31 of each year.
2. A report indicating the manner in which its liquid fuels tax allocation was expended in the previous year (Form MS-965) by January 31 of each year.
3. A report of elected and appointed officials by January 31 of each year.
4. A Survey of Financial Condition by March 15 of each year.

Department of Transportation *Publication 9* contains the policies and procedures that govern the use of Liquid Fuels Tax Fund money. However, if there is a difference between *Publication 9* and any legislation, the legislation shall govern.

TOWNSHIP OF JACKSON
 DAUPHIN COUNTY
 LIQUID FUELS TAX FUND
 2012 FORM MS-965 – SECTION 1
 WITH ADJUSTMENTS

| <u>Expenditure Summary</u> | <u>Reported</u> | <u>Adjustments</u> | <u>Adjusted Amount</u> |
|---|----------------------|--------------------|----------------------------|
| Major equipment purchases | \$ - | \$ - | \$ - |
| Minor equipment purchases | - | - | - |
| Computer/Computer related training | - | - | - |
| Agility projects | - | - | - |
| Cleaning streets and gutters | - | - | - |
| Winter maintenance services | - | - | - |
| Traffic control devices | - | - | - |
| Street lighting | - | - | - |
| Storm sewers and drains | - | - | - |
| Repairs of tools and machinery | - | - | - |
| Maintenance and repair of roads and bridges | - | - | - |
| Highway construction and rebuilding projects | 213,280.00 | - | 213,280.00 |
| Miscellaneous | - | - | - |
| | <hr/> | <hr/> | <hr/> |
| Total (To Section 2, Line 5) | <u>\$ 213,280.00</u> | <u>\$ -</u> | <u>\$ 213,280.00</u> |

Notes to Form MS-965 With Adjustments are an integral part of this report.

TOWNSHIP OF JACKSON
 DAUPHIN COUNTY
 LIQUID FUELS TAX FUND
 2012 FORM MS-965 – SECTION 2
 WITH ADJUSTMENTS

| <u>Fund Balance</u> | <u>Reported</u> | <u>Adjustments</u> | <u>Adjusted Amount</u> |
|--------------------------------------|----------------------------|--------------------|----------------------------|
| 1. Balance, January 1, 2012 | \$ 152,925.56 | \$ - | \$ 152,925.56 |
| Receipts: | | | |
| 2. State allocation | 80,616.14 | - | 80,616.14 |
| 2a. Turnback allocation | - | - | - |
| 2b. Interest on investments (Note 3) | 478.03 | - | 478.03 |
| 2c. Miscellaneous | - | - | - |
| 3. Total receipts | <u>81,094.17</u> | <u>-</u> | <u>81,094.17</u> |
| 4. Total funds available | <u>234,019.73</u> | <u>-</u> | <u>234,019.73</u> |
| 5. Expenditures (Section 1) | <u>213,280.00</u> | <u>-</u> | <u>213,280.00</u> |
| 6. Balance, December 31, 2012 | <u><u>\$ 20,739.73</u></u> | <u><u>\$ -</u></u> | <u><u>\$ 20,739.73</u></u> |

Notes to Form MS-965 With Adjustments are an integral part of this report.

TOWNSHIP OF JACKSON
 DAUPHIN COUNTY
 LIQUID FUELS TAX FUND
 2012 FORM MS-965 – SECTION 3
 WITH ADJUSTMENTS

| <u>Equipment Balance</u> | <u>Reported</u> | <u>Adjustments</u> | <u>Adjusted Amount</u> |
|---|---------------------|--------------------|----------------------------|
| 1. Prior year equipment balance | \$ 32,252.86 | \$ - | \$ 32,252.86 |
| 2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2) | 16,123.23 | - | 16,123.23 |
| 3. PENNDOT approved adjustments | <u>-</u> | <u>-</u> | <u>-</u> |
| 4. Total funds available for equipment acquisition | 48,376.09 | - | 48,376.09 |
| 5. Less: Major equipment expenditures | <u>-</u> | <u>-</u> | <u>-</u> |
| 6. Remainder | <u>48,376.09</u> | <u>-</u> | <u>48,376.09</u> |
| 7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero) | <u>\$ 20,739.73</u> | <u>\$ -</u> | <u>\$ 20,739.73</u> |

Notes to Form MS-965 With Adjustments are an integral part of this report.

TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORM MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

1. Criteria

Section 1

This section of Form MS-965 With Adjustments provides a summary of Liquid Fuels Tax Fund expenditures by category. Categories requiring explanation include:

- Major equipment purchases are purchases of road machinery and road equipment that cost in excess of \$4,000.00 prior to 2012 and in excess of \$10,000.00 during 2012 and subsequent years.
- Minor equipment purchases are purchases of road machinery and road equipment that cost \$4,000.00 or less prior to 2012 and \$10,000.00 or less during 2012 and subsequent years.
- Agility projects are exchanges of services with the Department of Transportation.

Section 2

This section of Form MS-965 With Adjustments provides information on the fund balance. Categories requiring explanation include:

- The state allocation is generally received from the Department of Transportation during the first week in April of each year. The amount the municipality receives is based half on its population and half on its road mileage.
- The turnback allocation is generally received from the Department of Transportation during the first week in April of each year. A municipality receives a yearly turnback allocation based on road mileage for all roads that were transferred to the municipality from the Commonwealth of Pennsylvania through the Highway Transfer Program.
- Expenditures include the total transferred from Section 1.

TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORM MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

1. Criteria (Continued)

Section 3

This section of Form MS-965 With Adjustments determines if the municipality expended Liquid Fuels Tax Fund money in excess of the permissible amount for equipment and the balance that the municipality may carry forward for the purchase of equipment to the subsequent year.

Department of Transportation *Publication 9* requires that the amount expended for equipment purchases in a given year not exceed the sum of the equipment balance carried forward from the previous year and 20 percent of the current year's Liquid Fuels Tax Fund allocation and, if applicable, 20 percent of the turnback allocation plus other Department of Transportation approved adjustments.

If the municipality spent in excess of the amount listed on Line 4, the excess must be reimbursed to the Liquid Fuels Tax Fund.

The equipment balance to be carried forward for the subsequent year is the lesser of the amount on Line 6 or the ending fund balance on Line 6 of Section 2, but not less than zero.

Basis Of Presentation

The financial activities of the municipality are accounted for in separate funds. The Liquid Fuels Tax Fund is used to account for state aid revenues from the Pennsylvania Department of Transportation used primarily for building and improving local roads and bridges. The Form MS-965 has been prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Transportation as a result of the Fuels Tax Act 655, dated 1956 and as amended, which does not constitute a complete presentation of the entity's assets, liabilities, expenses, and fund balance. Accordingly, the presentation of Form MS-965 With Adjustments is restricted to the Liquid Fuels Tax Fund, which represents a segment of the entity.

Basis Of Accounting

The accompanying Form MS-965 With Adjustments is prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Transportation. Under this method, revenues are recognized when received and expenditures are recorded when paid.

TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORM MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

1. Criteria (Continued)

General Fixed Assets

General fixed assets are recognized as expenditures at the time of purchase. No depreciation has been provided on the heavy equipment used to maintain and repair roads and bridges.

2. Deposits

The Second Class Township Code, Title 53 P.S. § 68204, authorizes the township to deposit its funds in the following:

- Deposits in savings accounts or time deposits, other than certificates of deposit or share accounts of institutions having their principal place of business in the Commonwealth of Pennsylvania and insured by the Federal Deposit Insurance Corporation (FDIC) or other like insurance. For any amount above the insured maximum, the depository shall pledge approved collateral.
- Certificates of deposit purchased from institutions insured by the FDIC or other like insurance to the extent that such accounts are so insured. For any amounts in excess of the insured maximum, such deposits shall be collateralized by a pledge or assignment of assets. Certificates of deposit may not exceed 20 percent of a bank's total capital surplus or 20 percent of a savings and loan's or savings bank's assets minus liabilities.

Deposits consist of receipts and deposits in a financial institution. Pennsylvania statutes require all deposits to be insured and, for any amount above the insured maximum, to be secured with approved collateral as defined.

There were no deposits exposed to custodial credit risk as of December 31, 2012. Custodial credit risk, as defined by GASB No. 40, includes deposits that are not covered by depository insurance and the deposits are uncollateralized, collateralized with securities held by the pledging financial institution, or collateralized with securities held by the pledging financial institution's trust department or agent but not in the municipality's name.

TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORM MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

2. Deposits (Continued)

Fund Balance

The fund balance consists of the following:

| | |
|------|--------------------|
| Cash | <u>\$20,739.73</u> |
|------|--------------------|

3. Interest On Investments

Our examination disclosed that the municipality deposited idle liquid fuels tax money in an interest-bearing account which earned \$478.03 during 2012, thus providing additional funds for road maintenance and repairs.

TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

**Finding - Related Party Transaction And Payment Of Invoice In Excess Of
Contract Price**

The township expended \$213,280.00 during 2012 from the Liquid Fuels Tax Fund for the purchase of superpave from Vendor A for project No. 12-22205-12. During our examination we determined that a township supervisor did not disclose that he owns a trucking company that hauled superpave for Vendor A on this project. The business relationship between Vendor A and the supervisor appears to be an undisclosed related party transaction.

On June 3, 2012, the following bids for the superpave were opened at a meeting of the Township Supervisors:

| <u>Vendor</u> | <u>Bid Amount</u> |
|---------------|-------------------|
| Vendor A | \$213,280.00 |
| Vendor B | \$220,435.00 |
| Vendor C | \$223,018.40 |
| Vendor D | \$228,796.80 |

The township awarded the contract to Vendor A, the lowest bidder, in the amount of \$213,280.00. The motion to approve the contract was seconded by the supervisor and he voted in favor of the contract. Subsequently on September 12, 2012, the township supervisors approved a \$5,600.00 change order to the contract with Vendor A. The motion to approve the change order was seconded and voted for by the supervisor. The change order increased the contract amount to \$218,880.0. The township's meeting minutes do not include any disclosure by the supervisor of his business relationship with Vendor A or his financial interest in the contract.

Upon completion of the project, Vendor A submitted an invoice for \$236,195.13 to the township. The invoice amount exceeded the contracted amount by \$17,315.13 and it also exceeded all of the original bids on the contract. Although the approved contract amount, including the change order, was \$218,880.00, the township paid Vendor A the total invoice amount of \$236,195.13. The invoice was paid with \$213,280.00 from the Liquid Fuels Tax Fund and \$22,915.13 from the General Fund.

TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

Finding - Related Party Transaction And Payment Of Invoice In Excess Of Contract Price (Continued)

Due to the supervisor's undisclosed financial interest in the company as an independent hauler for Vender A, and his failure to abstain from voting to approve the award of the contract and change order, this contract appears to violate The Public Official and Employee Ethics Act. Therefore, the contract and the change order should not have been entered into by the township.

The Public Official and Employee Ethics Act ("Ethics Act"), 65 P.S. 1103(f), states, in part:

No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract.

Additionally, the Ethics Act, 65 P.S. 1103(j), states:

Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has abstained from voting as a

TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

Finding - Related Party Transaction And Payment Of Invoice In Excess Of Contract Price (Continued)

result of a conflict of interest and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.

If it is determined that this contract violates the Ethics Act, the township could be required by the Pennsylvania Department of Transportation to reimburse \$213,280.00 to its Liquid Fuels Tax Fund.

Copies of this finding will be forwarded to the Pennsylvania Department of Transportation and the State Ethics Commission for their review and whatever action they may deem appropriate.

Recommendations

We recommend that the township reimburse \$213,280.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We recommend that, in the future, the township comply with the Ethics Act.

We further recommend that, in the future, the township pay only the agreed upon price on contracts for goods and services and that the township seek a refund of \$17,315.13 from Vendor A.

Management's Response

The township officials offered no formal response at this time.

Auditor's Conclusion

Although the township advertised for bids for the project, it did not comply with the Ethics Act because of the supervisor's undisclosed financial interest in the contract as an independent hauler for Vendor A, and his failure to abstain from voting to approve the award of the contract and change order.

The board of supervisors should ensure that the municipality complies with the Ethics Act as stated above. During our next examination we will determine if the municipality complied with our recommendations.

TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF EXIT CONFERENCE
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

An exit conference was held January 28, 2014. Those participating were:

TOWNSHIP OF JACKSON

Ms. Robyn Loesch, Secretary/Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Ms. Tammy Fleisher, Auditor

Ms. Vicki Baker, Auditor

The results of the examination were presented and discussed in their entirety.

TOWNSHIP OF JACKSON
DAUPHIN COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2012

This report was initially distributed to:

The Honorable Barry J. Schoch, P.E.
Secretary
Department of Transportation

Mr. Robert P. Caruso
Executive Director
Pennsylvania State Ethics Commission

Township of Jackson
Dauphin County
450 Bastian Road
Halifax, PA 17032

The Honorable Ira R. Kulp, Jr.

Chairman of the Board of Supervisors

Ms. Robyn Loesch

Secretary/Treasurer

This report is a matter of public record and is available online at www.auditorgen.state.pa.us.
Media questions about the report can be directed to the Pennsylvania Department of the Auditor
General, Office of Communications, 231 Finance Building, Harrisburg, PA 17120; via email to:
news@auditorgen.state.pa.us.