

ATTESTATION ENGAGEMENT

Borough of Darby
Delaware County, Pennsylvania
23-407
Liquid Fuels Tax Fund
For the Period
January 1, 2012 to December 31, 2013

April 2015



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



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EUGENE A. DEPASQUALE
AUDITOR GENERAL

Independent Auditor's Report

The Honorable Leslie Richards
Acting Secretary
Department of Transportation
Harrisburg, PA 17120

We examined the accompanying Forms MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Borough of Darby, Delaware County, for the period January 1, 2012 to December 31, 2013. The municipality's management is responsible for the Forms MS-965. Our responsibility is to express an opinion on the Forms 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 Borough of Darby, Delaware County's Forms MS-965 for the period January 1, 2012 to December 31, 2013 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*.

As described in Note 4, the adjustments included on the Forms MS-965 With Adjustments are made by the Department of the Auditor General.

Independent Auditor's Report (Continued)

As discussed in Finding No. 2, the municipality transferred \$102,000.00 on February 21, 2012 and \$115,000.00 on November 1, 2013 from its Liquid Fuels Tax Fund to its General Fund. However, the General Fund had only incurred eligible expenditures of \$17,869.61. Additionally, on January 16, 2013, the municipality transferred \$101,000.00 from its Liquid Fuels Tax Fund to its Payroll Fund. However, no permissible Liquid Fuels Tax Fund payroll expenditures were paid from the Payroll Fund. Furthermore, as discussed in Finding No. 3, the municipality expended \$3,400.00 on December 31, 2012 for a traffic signal pole and flasher cabinet. However, the invoice was dated July 29, 2011. Because the items were purchased during 2011 but were not paid until 2012, the expenditure is considered to be a retroactive expenditure, which is nonpermissible.

In our opinion, except for the matters discussed in the preceding paragraph, the Forms MS-965 With Adjustments present, in all material respects, the information required by the Pennsylvania Department of Transportation for the Liquid Fuels Tax Fund of the Borough of Darby, Delaware County, for the period January 1, 2012 to December 31, 2013, in conformity with the criteria set forth in Note 1.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that have a material effect on the Forms MS-965; and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the Forms MS-965. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the Forms 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 Forms MS-965 or on compliance and other matters; accordingly, we express no such opinions.

A deficiency in internal control 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 and correct, misstatements on a timely basis. *A material weakness* is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Forms MS-965 will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Independent Auditor's Report (Continued)

Our consideration of internal control was for the limited purpose of expressing an opinion on whether the Forms MS-965 are presented in accordance with the criteria described above and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our engagement we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified. We did identify certain deficiencies in internal control, described in the finding listed below, that we consider to be a significant deficiency in internal control:

- Idle Funds Held In A Noninterest-Bearing Account.

As part of obtaining reasonable assurance about whether the Forms MS-965 are free from material misstatement, we performed tests of the Borough of Darby, Delaware County's compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of amounts on the Forms MS-965. However, providing an opinion on compliance with those provisions was not an objective of our engagement, and accordingly, we do not express such an opinion. The results of our tests disclosed the following instances of noncompliance that are required to be reported under *Government Auditing Standards*:

- Amount Transferred From The Liquid Fuels Tax Fund To Other Funds Exceeded Eligible Expenditures - Recurring.
- Retroactive Expenditure.

We also noted an other matter that, while not required to be included in this report by *Government Auditing Standards*, has been included in the finding below:

- Late Receipt Of Allocation.

We are concerned that the municipality failed to comply with our prior examination finding for transferring Liquid Fuels Tax Fund money to other fund in excess of eligible expenditures. During our current examination period the municipality held idle Liquid Fuels Tax Fund money in a noninterest-bearing account, transferred Liquid Fuels Tax Fund to other funds in excess of the approved amount of eligible expenditures, made a retroactive expenditure, and received its 2012 Liquid Fuels Tax Fund allocation late.

If the municipality had invested idle Liquid Fuels Tax Fund money into an interest-bearing account additional money would have been earned for road maintenance and repairs. Additionally, when Liquid Fuels Tax Fund money is commingled with other funds, the potential for Liquid Fuels Tax Fund money to be used for unauthorized purposes increases significantly and could result in \$84,130.39 being required to be reimbursed to the Liquid Fuels Tax Fund.

Independent Auditor's Report (Continued)

Furthermore, the failure to follow the Department of Transportation's *Publication 9* could result in the municipality having to reimburse \$3,400.00 to its Liquid Fuels Tax Fund for retroactive expenditures. Also, had the municipality received its 2012 Liquid Fuels Tax Fund allocation timely, money may have been available for investment purposes, potentially earning interest income which could have been used for road maintenance and repairs. The municipality should strive to comply with the recommendations and corrective actions noted in this report.

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

We appreciate the courtesy extended by the Borough of Darby, Delaware County, to us during the course of our examination. If you have any questions, please feel free to contact Michael B. Kashishian, CPA, CGAP, CFE, Director, Bureau of County Audits, at 717-787-1363.



Eugene A. DePasquale
Auditor General

December 4, 2014

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BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

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.

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 2012 FORM MS-965 – SECTION 1
 WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
Major equipment purchases	\$ -	\$ -	\$ -
Minor equipment purchases	502.71	-	502.71
Computer/Computer related training	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	-	-	-
Traffic control devices	-	311.33	311.33
Street lighting	91,379.42	13,076.60	104,456.02
Storm sewers and drains	-	-	-
Repairs of tools and machinery	9,257.75	3,746.89	13,004.64
Maintenance and repair of roads and bridges	-	734.79	734.79
Highway construction and rebuilding projects	49,721.60	-	49,721.60
Miscellaneous (Finding No. 2)	102,000.00	(17,869.61)	84,130.39
	<u>102,000.00</u>	<u>(17,869.61)</u>	<u>84,130.39</u>
Total (To Section 2, Line 5)	<u>\$ 252,861.48</u>	<u>\$ -</u>	<u>\$ 252,861.48</u>

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

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 2012 FORM MS-965 – SECTION 2
 WITH ADJUSTMENTS

<u>Fund Balance</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
1. Balance, January 1, 2012	\$ 166,894.76	\$ 436.44	\$ 167,331.20
Receipts:			
2. State allocation	163,707.74	-	163,707.74
2a. Turnback allocation	-	-	-
2b. Interest on investments (Note 3)	42.98	(15.70)	27.28
2c. Miscellaneous (Note 5)	89,467.37	-	89,467.37
3. Total receipts	<u>253,218.09</u>	<u>(15.70)</u>	<u>253,202.39</u>
4. Total funds available	<u>420,112.85</u>	<u>420.74</u>	<u>420,533.59</u>
5. Expenditures (Section 1)	<u>252,861.48</u>	<u>-</u>	<u>252,861.48</u>
6. Balance, December 31, 2012	<u><u>\$ 167,251.37</u></u>	<u><u>\$ 420.74</u></u>	<u><u>\$ 167,672.11</u></u>

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

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 2012 FORM MS-965 – SECTION 3
 WITH ADJUSTMENTS

<u>Equipment Balance</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
1. Prior year equipment balance	\$ 88,347.54	\$ 420.74	\$ 88,768.28
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	32,741.55	-	32,741.55
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	121,089.09	420.74	121,509.83
5. Less: Major equipment expenditures	-	-	-
6. Remainder	<u>121,089.09</u>	<u>420.74</u>	<u>121,509.83</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 121,089.09</u>	<u>\$ 420.74</u>	<u>\$ 121,509.83</u>

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

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 2013 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	2,746.09	-	2,746.09
Computer/Computer related training	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	2,585.87	-	2,585.87
Traffic control devices	-	-	-
Street lighting	76,780.97	-	76,780.97
Storm sewers and drains	-	-	-
Repairs of tools and machinery	20,402.89	-	20,402.89
Maintenance and repair of roads and bridges	1,957.48	-	1,957.48
Highway construction and rebuilding projects	1,684.00	-	1,684.00
Miscellaneous (Finding No. 2)	216,000.00	-	216,000.00
 Total (To Section 2, Line 5)	 <u>\$ 322,157.30</u>	 <u>\$ -</u>	 <u>\$ 322,157.30</u>

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

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 2013 FORM MS-965 – SECTION 2
 WITH ADJUSTMENTS

<u>Fund Balance</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
1. Balance, January 1, 2013	\$ 167,251.37	\$ 420.74	\$ 167,672.11
Receipts:			
2. State allocation	160,203.35	-	160,203.35
2a. Turnback allocation	-	-	-
2b. Interest on investments	-	-	-
2c. Miscellaneous (Note 5)	<u>139,940.48</u>	<u>-</u>	<u>139,940.48</u>
3. Total receipts	<u>300,143.83</u>	<u>-</u>	<u>300,143.83</u>
4. Total funds available	<u>467,395.20</u>	<u>420.74</u>	<u>467,815.94</u>
5. Expenditures (Section 1)	<u>322,157.30</u>	<u>-</u>	<u>322,157.30</u>
6. Balance, December 31, 2013	<u><u>\$ 145,237.90</u></u>	<u><u>\$ 420.74</u></u>	<u><u>\$ 145,658.64</u></u>

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

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 2013 FORM MS-965 – SECTION 3
 WITH ADJUSTMENTS

<u>Equipment Balance</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
1. Prior year equipment balance	\$ 121,089.09	\$ 420.74	\$ 121,509.83
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	32,040.67	-	32,040.67
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	153,129.76	420.74	153,550.50
5. Less: Major equipment expenditures	-	-	-
6. Remainder	<u>153,129.76</u>	<u>420.74</u>	<u>153,550.50</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 145,237.90</u>	<u>\$ 420.74</u>	<u>\$ 145,658.64</u>

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

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 NOTES TO FORMS MS-965 WITH ADJUSTMENTS
 FOR THE PERIOD
 JANUARY 1, 2012 TO DECEMBER 31, 2013

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 with varying yearly costs in excess of the amounts indicated below:

Prior To 2012	2012	2013	2014
\$4,000.00	\$10,000.00	\$10,200.00	\$10,300.00

- Minor equipment purchases are purchases of road machinery and road equipment with varying yearly costs, or less, than the amounts indicated below:

Prior To 2012	2012	2013	2014
\$4,000.00	\$10,000.00	\$10,200.00	\$10,300.00

- 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.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

1. Criteria (Continued)

Section 2 (Continued)

- Expenditures include the total transferred from Section 1.

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 Forms MS-965 have 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 Forms MS-965 With Adjustments is restricted to the Liquid Fuels Tax Fund, which represents a segment of the entity.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

1. Criteria (Continued)

Basis Of Accounting

The accompanying Forms MS-965 With Adjustments are 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.

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 Borough Code, Title 53 P.S § 46316, authorizes the borough 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 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.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

2. Deposits (Continued)

There were no deposits exposed to custodial credit risk as of December 31, 2013. 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.

Fund Balance

The fund balance as of December 31, 2013 consists of the following:

Cash	<u>\$145,658.64</u>
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3. Interest On Investments

Our examination disclosed that the municipality deposited idle liquid fuels tax money in an interest-bearing account which earned \$27.28 during 2012 (see Finding No. 1).

4. Adjustments

2012 - Section 1

Adjustments were made to "Traffic control devices," "Street lighting," "Repairs of tools and machinery," "Maintenance and repair of roads and bridges," and "Miscellaneous" because expenditures of \$17,869.61 were misclassified.

2012 - Section 2

An adjustment of \$436.44 was made to "Balance, January 1, 2012" because of prior report adjustments that were not carried forward in the fund balance.

An adjustment of \$(15.70) was made to "Interest on investments" because interest earnings were overstated.

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 NOTES TO FORMS MS-965 WITH ADJUSTMENTS
 FOR THE PERIOD
 JANUARY 1, 2012 TO DECEMBER 31, 2013

4. Adjustments (Continued)

2012 - Section 3

An adjustment of \$420.74 was made to “Prior year equipment balance” because of prior report adjustments that were not carried forward in the equipment balance.

2013 - Section 2

An adjustment of \$420.74 was made to “Balance, January 1, 2013” to reflect the adjustments made to the fund balance in 2012 - Section 2.

2013 - Section 3

An adjustment of \$420.74 was made to “Prior year equipment balance” to reflect the adjustment made to the equipment balance in 2012 - Section 3.

5. Miscellaneous Receipts

The following miscellaneous receipts were deposited into the Liquid Fuels Tax Fund during the examination period:

<u>Source</u>	<u>Description</u>	<u>2012</u>	<u>2013</u>
General Fund	Reimbursement (Summary of 2005-2007 examination recommendations)	\$59,757.96	\$ -
General Fund	Grant	29,709.41	-
Delaware County	County Aid	-	32,805.00
General Fund	Reimbursement (summary of 2008-2011 examination recommendations)	-	<u>107,135.48</u>
Total		<u>\$89,467.37</u>	<u>\$139,940.48</u>

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

Finding No. 1 - Idle Funds Held In A Noninterest-Bearing Account

Our examination disclosed that liquid fuels tax money in excess of current needs was deposited in a noninterest-bearing checking account from May 31, 2012 to December 31, 2013 with an average balance of \$172,870.70.

Sound fiscal management requires that money in excess of current needs be deposited in interest-bearing accounts, certificates of deposit, or other investments as outlined in Section 1316 of *The Borough Code* as published by the Local Government Commission.

If the borough had invested the liquid fuels tax funds in interest-bearing accounts, certificates of deposit, or other investments outlined in Section 1316 of *The Borough Code* as published by the Local Government Commission, additional money would have been earned for road maintenance and repairs.

Recommendation

We recommend that the borough officials reassess their fiscal policy and consider investing money in excess of current needs in investments outlined in Section 1316 of *The Borough Code* as published by the Local Government Commission.

Management's Response

The borough manager stated:

We will be moving our account to a different bank in the near future. (It will be an interest bearing account)

Auditor's Conclusion

During our next examination, we will determine if the municipality complied with our recommendation.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

Finding No. 2 - Amount Transferred From The Liquid Fuels Tax Fund To Other Funds Exceeded Eligible Expenditures - Recurring

We cited the municipality for failing to maintain documentation to support transfers to the General Fund in our prior four reports with the most recent for the period January 1, 2008 to December 31, 2011. Our current examination disclosed that the municipality transferred \$102,000.00 on February 21, 2012 and \$115,000.00 on November 1, 2013 from its Liquid Fuels Tax Fund to its General Fund. However, the municipality had only expended \$17,869.61 during 2012 and \$0 during 2013 for eligible Liquid Fuels Tax Fund expenditures from its General Fund. Therefore, the amount transferred from the Liquid Fuels Tax Fund to the General Fund exceeded the expenditures incurred by \$199,130.39.

Additionally, on January 16, 2013, the transferred \$101,000.00 from its Liquid Fuels Tax Fund to its Payroll Fund. However, there were no permissible Liquid Fuels Tax Fund payroll expenditures paid from the Payroll Fund.

The practice of depositing liquid fuels money into any account other than the Liquid Fuels Tax Fund account in anticipation of future expenditures is contrary to the Act of June 1, 1956, P.L. (1955) 1944, 72 P.S. § 2615.5, known as the Liquid Fuels Tax Municipal Allocation Law, which states:

. . .each city, borough, town and township, shall . . . Establish and maintain a special fund into which the moneys [liquid fuels tax funds] . . . shall be deposited and into which no other moneys may be deposited or commingled . . .

Good internal accounting controls ensure that disbursements are made from the Liquid Fuels Tax Fund for only expenditures incurred. When Liquid Fuels Tax Fund money is commingled with the General Fund, or other funds, the potential for Liquid Fuels Tax Fund money to be used for unauthorized purposes increases significantly.

The municipality reimbursed \$216,000.00 to the Liquid Fuels Tax Fund October 15, 2014, which was subsequent to our examination period.

The failure to follow the Liquid Fuels Tax Municipal Allocation Law as noted above could result in the municipality having to reimburse \$84,130.39 to its Liquid Fuels Tax Fund.

This condition occurred because the municipality failed to comply with our prior examination recommendation to transfer only eligible expenditures from its Liquid Fuels Tax Fund to its General Fund.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

**Finding No. 2 - Amount Transferred From The Liquid Fuels Tax Fund To Other Funds
Exceeded Eligible Expenditures - Recurring (Continued)**

Recommendations

We recommend that the municipality reimburse \$84,130.39 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We again strongly recommend that the municipality only transfer money from the Liquid Fuels Tax Fund to other funds for expenditures incurred.

Management's Response

The borough manager stated:

Out of the \$300,130.39, \$212,000.00 was done by a mistake. While I was out of the office both times a check and a withdrawal was made out of the wrong account - Liquid Fuels (LF). The full amount was reimbursed to the LF account and \$102,000.00 was placed in the account General Fund for reimbursement. The Borough will deposit what wasn't utilized in the LF account as soon as possible. Since 2013, the Borough has been paying all approved expenditures out of the Liquid Fuels Account directly to avoid any more findings regarding eligible expenditures.

Auditor's Conclusion

Two of the three transfers cited in this finding were made during 2013. This is a recurring finding. We strongly recommend that the municipality complies with our recommendations. During our next examination we will determine if the municipality complied with our recommendations.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

Finding No. 3 - Retroactive Expenditure

Our examination disclosed that the municipality expended \$3,400.00 on December 31, 2012 for a traffic signal pole and flasher cabinet. However, the invoice was dated July 29, 2011. Because the items were purchased during 2011 but were not paid until 2012 the expenditure is considered to be a retroactive expenditure, which is nonpermissible.

The Department of Transportation's *Publication 9* contains the policies and procedures for the administration of the Liquid Fuels Tax Fund. *Publication 9*, Chapter Two, Section 2.7.2, states, in relevant part:

Examples of what Liquid Fuels Tax Fund monies may not be expended for are:

8. Repayments of prior year's expenditures.
17. Retroactive expenditures or repayment of other funds for prior period expenditures.

Because these expenditures were incurred on July 29, 2011 and were not paid until December 31, 2012, the expenditures incurred were not paid in a reasonable period of time. Therefore, the municipality did not comply with the Department of Transportation's *Publication 9*.

The failure to follow the Department of Transportation's *Publication 9* as noted above could result in the municipality having to reimburse \$3,400.00 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the municipality reimburse \$3,400.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the municipality comply with the Department of Transportation's *Publication 9* as noted above.

Management's Response

The municipal officials offered no formal response at this time.

Auditor's Conclusion

During our next examination we will determine if the municipality complied with our recommendations.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

Finding No. 4 - Late Receipt Of Allocation

Our examination disclosed that the 2012 Liquid Fuels Tax Fund allocation of \$163,707.74, which should have been distributed from the Department of Transportation to the municipality during the first week of April of that year, was not received until June 26, 2012 because the municipality failed to comply with the Department of Transportation's *Publication 9*, Chapter Two, Section 2.4, which states:

To qualify for the annual liquid fuels tax allocation, a municipality shall:

- Submit annual reports (MS-965, Actual Use Report, MS-965P, Project and Miscellaneous Receipts, and MS-965S, Record of Checks).
- Make deposits and payments or expenditures in compliance with the Act 655. Failure to do so may result in not receiving allocations from PENNDOT until all discrepancies are resolved.
- Submit the Pennsylvania Department of Community and Economic Development's (DCED) Report of Elected and Appointed Officials by January 31st and the Survey of Financial Condition by March 15th.
- Ensure resolution of all Contractor Responsibility Program (CRP) holds and blocks imposed by the Department of Revenue and the Department of Labor and Industry.

Because the municipality failed to file documents and information timely as noted above, the municipality did not have use of the 2012 allocation for more than two months for the 2012 allocation. Furthermore, had the allocation been received timely, money may have been available for investment purposes, potentially earning interest income which could have been used for road maintenance and repairs.

The municipality received its 2013 Liquid Fuels Tax Fund allocation on time.

Recommendation

We recommend that, in the future, the municipality continue to comply with the Department of Transportation's *Publication 9* to ensure that the allocations are received during the first week in April as outlined above.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

Finding No. 4 - Late Receipt Of Allocation

Management's Response

The municipal officials offered no formal response at this time.

Auditor's Conclusion

During our next examination we will determine if the municipality complied with our recommendation.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF PRIOR EXAMINATION RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

Summary Of 2005-2007 Examination Recommendations

In our 2005-2007 report we recommended that the Department of Transportation review our examination finding to determine if the municipality should reimburse \$148,707.38 to its Liquid Fuels Tax Fund. This amount consists of \$6,740.16 for transferring money to the General Fund in excess of eligible expenditures, \$141,758.32 for retroactive expenditures, and \$208.90 for nonpermissible expenditures.

During our prior examination we reviewed a letter dated March 10, 2010, from the Department of Transportation informing the municipality to reimburse \$119,515.92 of the \$148,707.38 over a two year period to its Liquid Fuels Tax Fund. We noted that the municipality reimbursed \$59,757.96 to its Liquid Fuels Tax Fund on both January 7, 2011 and May 24, 2012.

Summary Of 2008-2011 Examination Recommendations

In our 2008-2011 report we recommended that the Department of Transportation review our examination findings to determine if the municipality should reimburse \$107,135.48 to its Liquid Fuels Tax Fund. This amount consists of \$96,200.48 for transferring money to the General Fund in excess of eligible expenditures and \$10,935.00 for over expending Liquid Fuels money on projects.

During our current examination we reviewed a letter dated July 7, 2013, from the Department of Transportation informing the municipality to reimburse \$107,135.48 to its Liquid Fuels Tax Fund. We noted that the municipality reimbursed this amount to its Liquid Fuels Tax Fund on December 30, 2013.

In our 2008-2011 report we also recommended:

- That the municipality expend only the approved amount of Liquid Fuels Tax Fund money on road construction projects.
- That the municipality implement internal controls to ensure transfers are reviewed timely to avoid excess transfers.

During our current examination we noted that the municipality complied with our first bulleted recommended and did not comply with our second bulleted recommendation (Finding No. 2).

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF EXIT CONFERENCE
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

An exit conference was held November 3, 2014. Those participating were:

BOROUGH OF DARBY

Mr. Mark Possenti, Borough Manager

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Fred Casella, Auditor

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

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2012 TO DECEMBER 31, 2013

This report was initially distributed to:

The Honorable Leslie Richards
Acting Secretary
Department of Transportation

Borough of Darby
Delaware County
1020 Ridge Avenue
P. O. Box 351
Darby, PA 19023

The Honorable Janice Davis

President of Council

Mr. Mark Possenti

Borough Manager

This report is a matter of public record and is available online at <http://www.PaAuditor.gov>. 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@PaAuditor.gov.