ATTESTATION ENGAGEMENT

Borough of Kingston

Luzerne County, Pennsylvania

40-414

Liquid Fuels Tax Fund

For the Period

January 1, 2013 to December 31, 2013

April 2015

Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General

Commonwealth of Pennsylvania
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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 Form MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Borough of Kingston, Luzerne County, for the period January 1, 2013 to December 31, 2013. 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 Borough of Kingston, Luzerne County's Form MS-965 for the period January 1, 2013 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 discussed in the Finding and Recommendations section of this report, during 2013 the municipality expended $59,699.36 from its Liquid Fuels Tax Fund for expenditures that were incurred during 2012, which are retroactive expenditures.

Although management of the municipality provided us with a management representation letter on the date of our exit conference of November 14, 2014, held at the municipality, they did not respond to our request for an updated management representation letter including the disclosure of any subsequent events that affected the Form MS-965 through the date of this report.

In our opinion, except for the $59,699.36 that was expended retroactively and the possible effects of the municipality's failure to obtain an update management representation letter, 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 Borough of Kingston, Luzerne County, for the period January 1, 2013 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 Form 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 Form 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 Form MS-965 is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on internal control over reporting on the Form 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 Form 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.

Our consideration of internal control over reporting on the Form MS-965 was for the limited purpose of expressing an opinion on whether the Form MS-965 is presented in accordance with the criteria described above and would not necessarily identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. 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.

Independent Auditor's Report (Continued)

As part of obtaining reasonable assurance about whether the Form MS-965 is free from material misstatement, we performed tests of the Borough of Kingston, Luzerne 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 Form 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 instance of noncompliance that is required to be reported under *Government Auditing Standards*:

- Retroactive Expenditures.

This report is intended solely for the information and use of the Pennsylvania Department of Transportation and the management of the Borough of Kingston, Luzerne 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 Kingston, Luzerne 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.

December 15, 2014

Eugene A. DePasquale
Auditor General

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BOROUGH OF KINGSTON
LUZERNE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2013 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 KINGSTON
LUZERNE COUNTY
LIQUID FUELS TAX FUND
2013 FORM MS-965 – SECTION 1
WITH ADJUSTMENTS

Expenditure Summary	Reported	Adjustments	Adjusted Amount
Major equipment purchases	$ -	$ -	$ -
Minor equipment purchases	1,338.40	-	1,338.40
Computer/Computer related training	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	6,890.12	-	6,890.12
Winter maintenance services	77,894.44	-	77,894.44
Traffic control devices	3,290.62	-	3,290.62
Street lighting	40,000.00	-	40,000.00
Storm sewers and drains	10,455.05	-	10,455.05
Repairs of tools and machinery	5,141.11	-	5,141.11
Maintenance and repair of roads and bridges	34,665.47	-	34,665.47
Highway construction and rebuilding projects	102,331.05	-	102,331.05
Miscellaneous	-	-	-
Total (To Section 2, Line 5)	$ 282,006.26	$ -	$ 282,006.26

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

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

Fund Balance	Reported	Adjustments	Adjusted Amount
1. Balance, January 1, 2013	$ 59,384.85	$ -	$ 59,384.85
Receipts:			
2. State allocation	241,286.25	-	241,286.25
2a. Turnback allocation	10,920.00	-	10,920.00
2b. Interest on investments (Note 3)	229.47	-	229.47
2c. Miscellaneous (Note 4)	216.60	-	216.60
3. Total receipts	252,652.32	-	252,652.32
4. Total funds available	312,037.17	-	312,037.17
5. Expenditures (Section 1)	282,006.26	-	282,006.26
6. Balance, December 31, 2013	$ 30,030.91	$ -	$ 30,030.91

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

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

Equipment Balance	Reported	Adjustments	Adjusted Amount
1. Prior year equipment balance	$ 59,384.85	$ -	$ 59,384.85
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	50,441.25	-	50,441.25
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	109,826.10	-	109,826.10
5. Less: Major equipment expenditures	-	-	-
6. Remainder	109,826.10	-	109,826.10
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	$ 30,030.91	$ -	$ 30,030.91

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

BOROUGH OF KINGSTON
LUZERNE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORM MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2013 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.

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.

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.

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 consists of the following:

Cash	$30,030.91

3. Interest On Investments

Our examination disclosed that the municipality deposited idle liquid fuels tax money in an interest-bearing account which earned $229.47 during 2013, thus providing additional funds for road maintenance and repairs.

4. Miscellaneous Receipts

On April 11, 2013, the municipality deposited $216.60 into its Liquid Fuels Tax Fund that was received from a vendor for returned items.

5. Bank Loan

On June 18, 2004, the municipality received approval from the Department of Community and Economic Development to borrow $3,685,000.00 for storm water improvements, a fire station, and paving projects. On June 9, 2004, the municipality borrowed $3,685,000.00, less fees of $83,299.00 from PNC Bond Capital Group. The net proceeds of the bond were $3,601,701.00. The term of the general obligation bond was for twenty years at a variable interest rate. Principal and interest payments are due semi-annually. The paving portion of general obligation bond was $765,000.00, however, in a letter dated July 6, 2004, the Department of Transportation granted the municipality approval to use only $750,000.00, plus interest, from the Liquid Fuels Tax Fund.

5. Bank Loan (Continued)

On November 1, 2009, the municipality re-structured the bond. The net proceeds of the bond were $3,285,000.00. The term of the general obligation bond was for twenty years at a variable interest rate. Principal interest payments are due semi-annually. The total amount eligible to be paid from the Liquid Fuels Tax Fund remained $750,000.00, plus interest. Prior years' principal and interest payments from the Liquid Fuels Tax Fund were $230,015.00 and $211,593.45, respectively.

During the current examination period the municipality paid principal of $22,770.00 and interest of $17,867.46 from the Liquid Fuels Tax Fund. These amounts are reflected in highway construction and rebuilding projects on the 2013 Form MS-965 - Section 1. The outstanding balance of the loan as of December 31, 2013, was $497,215.00, plus interest.

BOROUGH OF KINGSTON
LUZERNE COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2013 TO DECEMBER 31, 2013

Finding - Retroactive Expenditures

Our examination disclosed that during 2013 the municipality expended a total of $59,699.36 from its Liquid Fuels Tax Fund for expenditures that were incurred during 2012, which are retroactive expenditures. The retroactive expenditures were as follows:

Check No.	Check Date	Description	Invoice Number	Invoice Date	Check Amount
1688	01/30/13	Street/traffic control signs	140994	08/02/12	$ 737.11
1688	01/30/13	Street/traffic control signs	141053	08/07/12	178.79
1690	01/30/13	Precast inlet riser for storm sewer	131717	10/04/12	297.00
1690	01/30/13	Cast frames for storm sewer	131977	10/22/12	1,325.50
1690	01/30/13	Cast cover for storm sewer	132085	10/24/12	171.25
1690	01/30/13	Cast cover for storm sewer	132133	10/25/12	112.50
1690	01/30/13	Cast covers for storm sewers	132197	10/26/12	513.75
1691	01/30/13	Backhoe tire	01-495646	07/14/12	739.87
1693	01/30/13	Asphalt tarps	F00117	10/24/12	1,170.77
1701	02/21/13	Project No. 13-40414-001	322801	08/17/12	275.15
1701	02/21/13	Project No. 13-40414-001	311187	10/22/12	559.39
1735	06/27/13	Project No. 13-40414-001	0005	09/06/12	28,064.53
1735	06/27/13	Project No. 13-40414-001	0006	10/10/12	13,307.44
1735	06/27/13	Project No. 13-40414-001	0007	11/07/12	12,246.31
Total					$59,699.36

Finding - Retroactive Expenditures (Continued)

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 in 2012 and were not paid until 2013, 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 $59,699.36 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the municipality reimburse $59,699.36 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 KINGSTON
LUZERNE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF EXIT CONFERENCE
FOR THE PERIOD
JANUARY 1, 2013 TO DECEMBER 31, 2013

An exit conference was held November 14, 2014. Those participating were:

BOROUGH OF KINGSTON

Ms. Sondra Riviello, Finance Secretary

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Robert A. Bauder, Auditor

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

BOROUGH OF KINGSTON
LUZERNE COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2013 TO DECEMBER 31, 2013

This report was initially distributed to:

The Honorable Leslie Richards
Acting Secretary
Department of Transportation

Borough of Kingston
Luzerne County
500 Wyoming Avenue
Kingston, PA 18704

The Honorable Robert Thompson, Jr.	President of Council
Ms. Sondra Riviello	Finance Secretary

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.