



**TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
40-202**

**LIQUID FUELS TAX FUND
EXAMINATION REPORT**

**FOR THE PERIOD ENDED
JANUARY 1, 2007 TO DECEMBER 31, 2008**

COMMONWEALTH OF PENNSYLVANIA

EUGENE A. DEPASQUALE - AUDITOR GENERAL

DEPARTMENT OF THE AUDITOR GENERAL



Commonwealth of Pennsylvania
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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 Forms MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Township of Black Creek, Luzerne County, for the period January 1, 2007 to December 31, 2008. 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 Township of Black Creek, Luzerne County's Forms MS-965 for the period January 1, 2007 December 31, 2008 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)

This report is a revised report previously dated May 13, 2009 and is revised as a result of evidence obtained during an investigation conducted by our Office of Special Investigations regarding the preparation of fraudulent payroll records for two supervisors that were paid a total of \$96,650.61 from 2005 to 2008 as discussed in Finding No. 1. The 2007 and 2008 transactions related to the preparation of the fraudulent payroll records are included on the 2007 and 2008 Forms MS-965 With Adjustments as expenditures in the categories classified by the township. Information for the years 2005 and 2006, which are prior to our examination period, is included in our report to assist the borough and the Department of Transportation with determining an appropriate resolution to this matter.

As discussed in Finding No. 2, the township expended funds from the Liquid Fuels Tax Fund for which the township could not provide documentation evidencing that price quotations were obtained. These expenditures were \$8,127.60 for stock patch in 2007, \$9,143.73 for super pave in 2008, and \$5,924.91 for anti-skid in 2008. Also, as discussed in Finding No. 3, the township expended \$11,009.84 from the Liquid Fuels Tax Fund in 2008 for stock patch without advertising for bids. Additionally, as discussed in Finding No. 4, the township expended \$1,688.78 from the Liquid Fuels Tax Fund in 2008 for super pave which was used to pave a citizen's driveway. The township transferred \$1,688.78 from its General Fund to its Liquid Fuels Tax Fund on January 8, 2009, which was subsequent to our examination period.

In our opinion, except for the effects of the matters discussed in the two preceding paragraphs, 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 Township of Black Creek, Luzerne County, for the period January 1, 2007 to December 31, 2008, 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 Forms 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 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.

Independent Auditor's Report (Continued)

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 Black Creek, Luzerne 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 Black Creek, Luzerne County's Forms MS-965 that is more than inconsequential will not be prevented or detected by the Township of Black Creek, Luzerne County's internal control. We consider the deficiency described in the finding below to be a significant deficiency in internal control over reporting on the Form MS-965:

- Township Supervisor Prepared Fraudulent Payroll Records.

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 Black Creek, Luzerne County's internal control. Our consideration of the internal control over reporting on the Form MS-965 would not necessarily disclose all matters in the internal control that might be significant deficiencies and, accordingly, would not necessarily disclose all significant deficiencies that are also considered to be material weaknesses. We consider the significant deficiency described above to be a material weakness.

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

- Documentation For Price Quotations Was Not Available For Examination.
- Purchases Over \$10,000.00 In Noncompliance With Advertising And Bidding Requirements.
- Nonpermissible Expenditure.

Independent Auditor's Report (Continued)

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

A handwritten signature in black ink, appearing to read "Eugene A. DePasquale". The signature is fluid and cursive, with a long horizontal stroke at the end.

June 5, 2013

EUGENE A. DEPASQUALE
Auditor General

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TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

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 BLACK CREEK
 LUZERNE COUNTY
 LIQUID FUELS TAX FUND
 2007 FORM MS-965 – SECTION 1
 WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Major equipment purchases	\$ 11,742.18	\$ -	\$ 11,742.18
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	21,441.64	-	21,441.64
Maintenance and repair of roads and bridges	74,127.14	-	74,127.14
Highway construction and rebuilding projects	-	-	-
Miscellaneous	-	-	-
 Total (To Section 2, Line 5)	 <u>\$ 107,310.96</u>	 <u>\$ -</u>	 <u>\$ 107,310.96</u>

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

TOWNSHIP OF BLACK CREEK
 LUZERNE COUNTY
 LIQUID FUELS TAX FUND
 2007 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, 2007	\$ 4,443.33	\$ -	\$ 4,443.33
Receipts:			
2. State allocation	84,238.84	-	84,238.84
2a. Turnback allocation	20,680.00	-	20,680.00
2b. Interest on investments (Note 3)	613.14	-	613.14
2c. Miscellaneous	-	-	-
3. Total receipts	<u>105,531.98</u>	<u>-</u>	<u>105,531.98</u>
4. Total funds available	<u>109,975.31</u>	<u>-</u>	<u>109,975.31</u>
5. Expenditures (Section 1)	<u>107,310.96</u>	<u>-</u>	<u>107,310.96</u>
6. Balance, December 31, 2007	<u><u>\$ 2,664.35</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 2,664.35</u></u>

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

TOWNSHIP OF BLACK CREEK
 LUZERNE COUNTY
 LIQUID FUELS TAX FUND
 2007 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	\$ 4,443.33	\$ -	\$ 4,443.33
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	20,983.77	-	20,983.77
3. PENNDOT approved adjustments	<u>-</u>	<u>-</u>	<u>-</u>
4. Total funds available for equipment acquisition	25,427.10	-	25,427.10
5. Less: Major equipment expenditures	<u>11,742.18</u>	<u>-</u>	<u>11,742.18</u>
6. Remainder	<u>13,684.92</u>	<u>-</u>	<u>13,684.92</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 2,664.35</u>	<u>\$ -</u>	<u>\$ 2,664.35</u>

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

TOWNSHIP OF BLACK CREEK
 LUZERNE COUNTY
 LIQUID FUELS TAX FUND
 2008 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	12,168.05	-	12,168.05
Traffic control devices	-	-	-
Street lighting	-	-	-
Storm sewers and drains	-	-	-
Repairs of tools and machinery	20,327.95	-	20,327.95
Maintenance and repair of roads and bridges	83,170.37	-	83,170.37
Highway construction and rebuilding projects	-	-	-
Miscellaneous	-	-	-
 Total (To Section 2, Line 5)	 <u>\$ 115,666.37</u>	 <u>\$ -</u>	 <u>\$ 115,666.37</u>

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

TOWNSHIP OF BLACK CREEK
 LUZERNE COUNTY
 LIQUID FUELS TAX FUND
 2008 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, 2008	\$ 2,664.35	\$ -	\$ 2,664.35
Receipts:			
2. State allocation	92,715.98	-	92,715.98
2a. Turnback allocation	20,680.00	-	20,680.00
2b. Interest on investments (Note 3)	805.50	-	805.50
2c. Miscellaneous	-	-	-
3. Total receipts	<u>114,201.48</u>	<u>-</u>	<u>114,201.48</u>
4. Total funds available	<u>116,865.83</u>	<u>-</u>	<u>116,865.83</u>
5. Expenditures (Section 1)	<u>115,666.37</u>	<u>-</u>	<u>115,666.37</u>
6. Balance, December 31, 2008	<u><u>\$ 1,199.46</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 1,199.46</u></u>

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

TOWNSHIP OF BLACK CREEK
 LUZERNE COUNTY
 LIQUID FUELS TAX FUND
 2008 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	\$ 2,664.35	\$ -	\$ 2,664.35
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	22,679.20	-	22,679.20
3. PENNDOT approved adjustments	<u>-</u>	<u>-</u>	<u>-</u>
4. Total funds available for equipment acquisition	25,343.55	-	25,343.55
5. Less: Major equipment expenditures	<u>-</u>	<u>-</u>	<u>-</u>
6. Remainder	<u>25,343.55</u>	<u>-</u>	<u>25,343.55</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 1,199.46</u>	<u>\$ -</u>	<u>\$ 1,199.46</u>

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

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

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.
- Minor equipment purchases are purchases of road machinery and road equipment that cost \$4,000.00 or less.
- 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.

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.

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

1. Criteria (Continued)

Section 3 (Continued)

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.

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.

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

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, 2008. 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 BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

2. Deposits (Continued)

Fund Balance

The fund balance as of December 31, 2008 consists of the following:

Cash	\$1,199.46
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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 \$613.14 during 2007, and \$805.50 during 2008, thus providing additional funds for road maintenance and repairs.

4. Lease-Purchase Agreement

On September 3, 2003, the municipality entered into a lease-purchase agreement with Ford Motor Credit Company to purchase a 2003 Ford F-550 dump truck with a plow and spreader for \$51,605.49. The agreement was for a term of five years at an interest rate of 6.9 percent. Principal and interest payments of \$11,742.21 are due annually for the first four years with a principal and interest payment of \$11,742.18 due in the final year of the agreement. Prior years' principal and interest payments from the Liquid Fuels Tax Fund were \$35,879.01 and \$6,347.62, respectively. Additionally, the municipality paid principal of \$4,742.21 from the General Fund.

During the current examination period the municipality paid principal of \$10,984.27 and interest of \$757.91 from the Liquid Fuels Tax Fund. These amounts are reflected in major equipment purchases on the 2007 Form MS-965 - Section 1. The lease-purchase agreement was paid-in-full on August 23, 2007.

TOWNSHIP OF BLACK CREEK
 LUZERNE COUNTY
 LIQUID FUELS TAX FUND
 FINDINGS AND RECOMMENDATIONS
 FOR THE PERIOD
 JANUARY 1, 2007 TO DECEMBER 31, 2008

Finding No. 1 - Township Supervisor Prepared Fraudulent Payroll Records

Our examination disclosed that the municipality expended \$78,010.22 to one supervisor and \$18,640.39 to another supervisor from 2005-2008 from the Liquid Fuels Tax Fund for payroll. The breakdown of the wages was as follows:

Year	Supervisor 1	Supervisor 2
2005	\$17,551.12	\$ 6,224.43
2006	28,182.95	5,314.87
2007	27,506.54	5,022.00
2008	4,769.61	2,079.09
Totals	\$78,010.22	\$18,640.39

The municipality did maintain daily payroll time sheets identifying the nature of work performed and the location of work assignments. However, an investigation by the Department of the Auditor General’s Office of Special Investigations determined that the first supervisor created false and fraudulent daily attendance records to be prepared for both supervisors from 2005-2008 resulting in both receiving excess compensation from the Liquid Fuels Tax Fund.

More particularly, the investigation found that the documentation submitted to support the compensation paid to the supervisors for work done on Saturdays was false and fraudulent. Additionally, an extensive amount of the documentation supporting the compensation paid for hours worked from Monday through Friday was found to be false and fraudulent. Documentation for compensation was submitted for hours that were never worked. As a result, it is not possible to determine how much compensation was properly paid from the Liquid Fuels Tax Fund account.

Adequate internal controls over payroll should be effectively designed, implemented and monitored to ensure that there is accurate documentation supporting the nature of the work performed and the location of work assignments.

The Liquid Fuels Tax Municipal Allocation Law, 72 P.S. § 2615.4, provides, in part, that monies herein allocated may be used only for construction, reconstruction, maintenance and repairs of such public roads or streets, including bridges, culverts and drainage structures, for which they are legally responsible. Also permitted are expenditures involving acquisition, maintenance, repairs and operation of street signs, traffic signs, traffic signal control systems, road equipment, and snow fences.

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

Finding No. 1 - Township Supervisor Prepared Fraudulent Payroll Records (Continued)

The Department of Transportation has been statutorily authorized to promulgate regulations concerning the administration of Liquid Fuels Tax Fund money and has determined that certain items, including expenditures made based on fraudulent payroll records, are outside the scope of permissible expenditures.

Without payroll documentation that includes accurate daily time sheets that identify the nature of work performed and the location of work assignments, we could not determine if the payroll expenditures were permissible according to the Liquid Fuels Tax Municipal Allocation Law.

The failure to maintain accurate documentation of payroll expenditures as noted above could result in the municipality having to reimburse \$96,650.61 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the municipality reimburse \$96,650.61 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that the municipality ensure good internal control over payroll by maintaining accurate daily time sheets that identify the nature of work performed and the location of work assignments.

Management's Response

The municipal officials stated:

We are in receipt of your preliminary findings of June 5, 2013, wherein you notified Black Creek Township that a former township supervisor was preparing fraudulent payroll records for another former supervisor and himself during the years 2005-2008. You have determined that this resulted in improper paid wages from Liquid Fuels of \$96,650.61. As a result, you are recommending to the Pennsylvania Department of Transportation that the amount of \$96,650.61 be transferred from the Township's General Fund to its Liquid Fuels Tax Fund for the repayment of those wages. You advised that the township cannot have a copy of your investigative file, but will be receiving a written report by the end of the month.

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

Finding No. 1 - Township Supervisor Prepared Fraudulent Payroll Records (Continued)

Management's Response (Continued)

Based upon your preliminary findings as the Township understands them, the Township is writing you to reconsider your position for the following reasons. First, the Township's entire budget only totals approximately \$600,000.00 per year. The transferring of \$96,650.61 from our General Fund would cause a financial hardship to the Township since the amount is approximately 16 percent of our total budget. This would result in the inability of the Township to provide essential governmental services to its residents. Second, the Township should not be penalized for the actions of the past majority. The two supervisors involved in the alleged payroll scandal are no longer with the Township, and the acts upon which you are complaining occurred over a four year period approximately five years ago. Third, the allocation of this amount of funds to liquid fuels would in fact double our liquid fuels allocation in one year resulting in too much of an allocation into one area in one calendar year.

For the reasons stated, the Township is pleading with you to reconsider your position in light of the Township's financial condition. In addition, should you forward your report and recommendations to the Department of Transportation, the Township would request that you include a copy of this letter. We ask that you do so, so that both the Department of Transportation and the Auditor General understand why the Township does not have the ability to repay the Liquid Fuels Tax Fund the amount being requested.

Auditor's Conclusion

The Department of Transportation is responsible for determining the amount and timing of reimbursements. During our next examination, we will determine if the municipality complied with the determination made by the Department of Transportation. We will also determine if the municipality complied with our recommendation that the municipality ensure good internal control over payroll by maintaining accurate daily time sheets that identify the nature of work performed and the location of work assignments.

TOWNSHIP OF BLACK CREEK
 LUZERNE COUNTY
 LIQUID FUELS TAX FUND
 FINDINGS AND RECOMMENDATIONS
 FOR THE PERIOD
 JANUARY 1, 2007 TO DECEMBER 31, 2008

Finding No. 2 - Documentation For Price Quotations Was Not Available For Examination

Our examination disclosed that the township expended \$23,196.24 from the Liquid Fuels Tax Fund. This amount consists of \$8,127.60 for stock patch in 2007, and \$9,143.73 for super pave and \$5,924.91 for anti-skid in 2008 from the Liquid Fuels Tax Fund. Before making these expenditures the township was required to obtain written or telephonic price quotations. However, documentation for price quotations was not available for examination. These purchases were as follows:

<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Description</u>	<u>Check Number</u>	<u>Check Date</u>	<u>Amount</u>	<u>Totals</u>
4242	03/17/07	Stock patch	3683	04/04/07	\$ 531.70	
4273	03/31/07	Stock patch	3697	05/04/07	2,434.90	
4569	05/19/07	Stock patch	3710	06/06/07	658.45	
4981	06/23/07	Stock patch	3740	07/13/07	622.70	
Various	Various	Stock patch	3758	08/10/07	1,307.15	
Various	Various	Stock patch	3777	09/12/07	1,921.40	
6321	09/29/07	Stock patch	3794	10/09/07	651.30	
2007 Total						\$ 8,127.60
7998	06/21/08	Super pave	3868	07/02/08	963.75	
Various	Various	Super pave	3890	08/07/08	4,797.11	
8756*	08/01/08	Super pave	3912	09/10/08	3,382.87	
					9,143.73	
Various	Various	Anti Skid	3825	04/17/08	5,924.91	
					5,924.91	
2008 Total						15,068.64
Two Year Total						<u>\$23,196.24</u>

*This invoice includes costs of \$1,688.78 that are included in Finding No. 4.

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

Finding No. 2 - Documentation For Price Quotations Was Not Available For Examination
(Continued)

The above purchases were not made in compliance with the contract requirements of *The Second Class Township Code*, 53 P.S. § 68102(b), (also found at § 3102(b) of *The Second Class Township Code* as published by the Local Government Commission), which states, in part:

Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for all contracts that exceed four thousand dollars (\$4,000.00) but are less than the amount [in excess of \$10,000.00] requiring advertisement and competitive bidding or, in lieu of price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of telephonic price quotations shall be made and shall contain at least the date of the quotation, the name of the contractor and the contractor's representative, the construction, reconstruction, repair, maintenance or work which was the subject of the quotation and the price. Written price quotations, written records of telephonic price quotations and memoranda shall be retained for a period of three years.

In addition, the above purchases were not made in compliance with the Department of Transportation's *Publication 9*, Appendix D, Section 449.7(d), which states, in part:

...For material estimates between \$4,000 and \$10,000, three telephone price quotes shall be obtained prior to the selection of a supplier. In lieu of the price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors service the market area within which it is practicable to obtain quotations. If the cost during the year of an unadvertised item or group of like items ordinarily supplied by a single supplier exceeds \$10,000 or if the cost was between \$4,000 and \$10,000 and three price quotes were not obtained, the entire cost shall be ineligible for payment from the Liquid Fuels Tax Fund unless it can be shown to the satisfaction of the Secretary [of the Department of Transportation] that it was reasonably believed that the cost of the year's requirements of that item or group of like items would not exceed \$10,000 or be between \$4,000 and \$10,000 as specified above.

On January 8, 2009, the township reimbursed \$1,688.78 to the Liquid Fuels Tax Fund, which is subsequent to the examination period (see Finding No. 4).

The failure to comply with *The Second Class Township Code* and the Department of Transportation's *Publication 9* could result in the township having to reimburse \$21,507.46 to its Liquid Fuels Tax Fund.

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

Finding No. 2 - Documentation For Price Quotations Was Not Available For Examination
(Continued)

Recommendations

We recommend that the township reimburse \$21,507.46 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the township comply with *The Second Class Township Code* and the Department of Transportation's *Publication 9* as noted in this finding.

Management's Response

The township clerk stated:

Currently this is being corrected. We are now purchasing most supplies under the Co-Stars program [through a state contract].

Auditor's Conclusion

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

TOWNSHIP OF BLACK CREEK
 LUZERNE COUNTY
 LIQUID FUELS TAX FUND
 FINDINGS AND RECOMMENDATIONS
 FOR THE PERIOD
 JANUARY 1, 2007 TO DECEMBER 31, 2008

Finding No. 3 - Purchases Over \$10,000.00 In Noncompliance With Advertising And Bidding Requirements

Our examination disclosed that in 2008 the township expended \$11,009.84 from the Liquid Fuels Tax Fund for the purchase of stock patch without advertising for bids. These purchases were as follows:

<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Check Number</u>	<u>Check Date</u>	<u>Amount</u>
Various	Various	3776	04/17/08	\$ 933.40
Various	Various	3835	05/08/08	2,971.80
Various	Various	3854	06/04/08	1,268.80
7751	05/31/08	3868	07/02/08	1,588.60
Various	Various	3890	08/07/08	1,289.60
Various	Various	3960	12/04/08	2,957.64
Total				<u>\$11,009.84</u>

The above purchases were not made in compliance with the advertising, bidding, and contract requirements of *The Second Class Township Code*, 53 P.S. § 68102(a), (also found at § 3102(a) of *The Second Class Township Code* as published by the Local Government Commission), which requires that purchases over \$10,000.00 must be advertised, bid, and awarded by contract. *The Second Class Township Code*, 53 P.S. § 68104(a), (also found at § 3104(a) of *The Second Class Township Code* as published by the Local Government Commission) further states that advertising, bidding and contract requirements should not be evaded through piecemeal purchases.

In addition, the above purchases were not made in compliance with the Department of Transportation's *Publication 9*, Appendix D, Section 449.7(d), which states, in part:

Each municipality shall make an annual estimate of its requirements of road construction and maintenance materials, and shall advertise for bids on all items and groups of like items ordinarily supplied by a single supplier . . . which are estimated to exceed \$10,000 for the year If the cost during the year of an unadvertised item or group of like items ordinarily supplied by a single supplier exceeds \$10,000 . . . the entire cost shall be ineligible for payment from the Liquid Fuels Tax Fund unless it can be shown to the satisfaction of the Secretary [of the Department of Transportation] that it was reasonably believed that the cost of the year's requirements of that item or group of like items would not exceed \$10,000 . . .

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

Finding No. 3 - Purchases Over \$10,000.00 In Noncompliance With Advertising And Bidding Requirements (Continued)

The failure to comply with *The Second Class Township Code* and the Department of Transportation's *Publication 9* could result in the township having to reimburse \$11,009.84 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the township reimburse \$11,009.84 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the township comply with *The Second Class Township Code* and the Department of Transportation's *Publication 9* as noted in this finding.

Management's Response

The township clerk stated:

We are also correcting this issue by using Co-Stars vendors or will bid when necessary.

Auditor's Conclusion

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

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

Finding No. 4 - Nonpermissible Expenditure

Our examination disclosed that the municipality expended \$1,688.78 in 2008 from the Liquid Fuels Tax Fund for superpave that was used to pave a township supervisors' driveway, which is a nonpermissible expenditure. This amount was also included in Finding No. 2.

The Liquid Fuels Tax Municipal Allocation Law, 72 P.S. § 2615.4, provides, in part, that monies herein allocated may be used only for construction, reconstruction, maintenance, and repairs of such public roads or streets, including bridges, culverts and drainage structures, for which they are legally responsible. Also permitted are expenditures involving acquisition, maintenance, repairs and operation of street signs, traffic signs, traffic signal control systems, road equipment, and snow fences.

The Department of Transportation has been statutorily authorized to promulgate regulations concerning the administration of Liquid Fuels Tax Fund money and has determined that certain items, including superpave that is used to pave a township supervisor's driveway, are outside the scope of permissible expenditures.

The municipality transferred \$1,688.78 from its General Fund to its Liquid Fuels Tax Fund for the reimbursement of this expenditure on January 8, 2009, which was subsequent to our examination period. This amount had already been reimbursed to the General Fund by the citizen whose driveway was paved.

Recommendation

We recommend that, in the future, the municipality comply with the Liquid Fuels Tax Municipal Allocation Law and the Department of Transportation's Regulations regarding permissible expenditures.

Management's Response

The municipal clerk stated:

This amount was reimbursed to the Liquid Fuels Tax Fund on January 8, 2009.

Auditor's Conclusion

The municipality should comply with our recommendation as stated above.

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
COMMENT
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

Comment - Summary Of Prior Examination Recommendation

In our prior report we recommended that the municipality discontinue the practice of presigning Liquid Fuels Tax Fund checks.

During our current examination we noted that the municipality complied with our recommendation.

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF EXIT CONFERENCE
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

On June 5, 2013, we communicated to the Township of Black Creek, Luzerne County, via e-mail that we would be adding Finding No. 1 to our previously released report. Additionally, we had a phone conversation with the township supervisors regarding the finding subsequent to that date.

TOWNSHIP OF BLACK CREEK
LUZERNE COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2007 TO DECEMBER 31, 2008

This report was initially distributed to:

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

Township of Black Creek
Luzerne County
1330 Park Street
Rock Glenn, PA 18246

The Honorable Bonnie Adams	Chairman of the Board of Supervisors
The Honorable Donald Nenstiel	Supervisor
The Honorable Dennis D. Feerrar	Supervisor/Secretary/Treasurer

This report is a matter of public record and is available online at <http://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.