

FOREST COUNTY 27-000

LIQUID FUELS TAX FUND AND ACT 44 TAX FUND EXAMINATION REPORT

FOR THE YEAR ENDED DECEMBER 31, 2010

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# FOREST COUNTY LIQUID FUELS TAX FUND AND ACT 44 TAX FUND BACKGROUND FOR THE YEAR ENDED DECEMBER 31, 2010

#### **Background**

The Liquid Fuels and Fuels Tax Act, Title 75 P.S. § 9010, provides counties with allocations of liquid fuels taxes from the Commonwealth of Pennsylvania's Liquid Fuels Tax Fund in June and December of each year.

The allocations are based on the ratio of a county's average gas consumption in the years 1927, 1928, and 1929 to the total statewide consumption in those years. These allocations must be deposited into a separate fund called the County Liquid Fuels Tax Fund, from which payments may be made for construction, maintenance, and repair of county roads and bridges. Additionally, the Act provides that counties may allocate money from this fund to the political subdivisions within the county for these same purposes. It also allows counties to encumber current funds for future road and bridge construction, reconstruction, and maintenance projects. Furthermore, counties are allowed to use up to ten percent of its Liquid Fuels Tax Fund allocation each year for indirect costs, including benefit costs, overhead and other administrative charges for those county employees directly engaged in eligible projects.

The Department of Transportation has been given the regulatory authority for the administration of these funds. In order to receive Liquid Fuels Tax Funds as scheduled, each county must submit an annual report showing receipts, expenditures, and encumbrances for the preceding 12 months.

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.

Beginning in 2008, counties were allotted \$5,000,000.00 of funds generated from increased turnpike tolls for the construction and maintenance of county owned bridges. These funds are referred to as Act 44 Funds. These funds are distributed to counties based on the ratio of the square footage of the deck area of a county's county owned bridges to the total square footage of the deck area of a county the Commonwealth of Pennsylvania.





Department of the Auditor General Commonwealth of Pennsylvania Harrisburg, Pennsylvania 17120-0018

JACK WAGNER AUDITOR GENERAL

# Independent Auditor's Report

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

We examined the accompanying Form MS-991 With Adjustments for the Liquid Fuels Tax Fund and the Report of Act 44 Tax Fund With Adjustments of Forest County for the year ended December 31, 2010. The county's management is responsible for the Form MS-991 and the Report of Act 44 Tax Fund. Our responsibility is to express an opinion on the Form MS-991 With Adjustments and the Report of Act 44 Tax Fund 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 Forest County's Form MS-991 and Report of Act 44 Tax Fund for the year ended December 31, 2010 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 county'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 Form MS-991 With Adjustments and the Report of Act 44 Tax Fund With Adjustments are made by the Department of the Auditor General.

# Independent Auditor's Report (Continued)

As discussed in the Finding and Recommendations section of this report, the county expended \$10,467.50 from the Act 44 Tax Fund for a loan payment used for paving the courthouse access road, which is a nonpermissible expenditure.

In our opinion, except for the matter discussed in the preceding paragraph, the Form MS-991 With Adjustments and the Report of Act 44 Tax Fund With Adjustments present, in all material respects, the information required by the Pennsylvania Department of Transportation for the Liquid Fuels Tax Fund and Act 44 Tax Fund of Forest County for the year ended December 31, 2010, in conformity with the criteria set forth in Note 1.

In accordance with *Government Auditing Standards*, we are required to report findings of significant deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Form MS-991 and the Report of Act 44 Tax Fund and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether the Form MS-991 and the Report of Act 44 Tax Fund are presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over reporting on the Form MS-991 and the Report of Act 44 Tax Fund or on compliance and other matters; accordingly, we express no such opinions.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects Forest 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 Forest County's Form MS-991 and the Report of Act 44 Tax Fund that is more than inconsequential will not be prevented or detected by Forest County's internal control.

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-991 and the Report of Act 44 Tax Fund will not be prevented or detected by Forest County's internal control.

# Independent Auditor's Report (Continued)

Our consideration of internal control over reporting on the Form MS-991 and the Report of Act 44 Tax Fund was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any significant deficiencies or material weaknesses, as defined above, in internal control over reporting on the Form MS-991 and the Report of Act 44 Tax Fund.

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

• Nonpermissible Expenditure.

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

November 3, 2011

JACK WAGNER Auditor General



# FOREST COUNTY LIQUID FUELS TAX FUND 2010 FORM MS-991 WITH ADJUSTMENTS FOR THE YEAR ENDED DECEMBER 31, 2010

	 Reported	A	djustments (Note 4)	 Adjusted Amount
Balance, January 1, 2010	\$ 12,479.71	\$	-	\$ 12,479.71
Receipts:				
State allocations	17,192.29		-	17,192.29
Interest (Note 3)	54.98		-	54.98
Reimbursable agreements (Note 5)	4,924.73		-	4,924.73
Miscellaneous (Note 6)	 20,935.00		-	 20,935.00
Total receipts	 43,107.00			 43,107.00
Total funds available	 55,586.71			 55,586.71
Expenditures:				
Construction	32,746.05		-	32,746.05
Maintenance and repair	1,170.00		-	1,170.00
Administrative	-		-	-
Grants to political subdivisions	_		_	_
Miscellaneous (Note 7)	-		10,467.50	10,467.50
Accounts Payable	10,467.50		(10,467.50)	-
Total expenditures	 44,383.55		_	 44,383.55
Balance, December 31, 2010	11,203.16		-	11,203.16
Unpaid encumbrances	 47,571.22		(47,571.22)	 -
Unencumbered balance, December 31, 2010	\$ (36,368.06)	\$	47,571.22	\$ 11,203.16

Notes to Form MS-991 and Report of Act 44 Tax Fund With Adjustments are an integral part of this report.

# FOREST COUNTY LIQUID FUELS TAX FUND 2010 REPORT OF ACT 44 TAX FUND WITH ADJUSTMENTS FOR THE YEAR ENDED DECEMBER 31, 2010

	]	Reported	djustments (Note 4)	Adjusted Amount
Balance, January 1, 2010	\$	59.36	\$ -	\$ 59.36
Receipts:				
Act 44 Funds		20,905.79	(29.85)	20,875.94
Interest (Note 3)		.97	-	.97
Reimbursable Agreements		-	-	-
Miscellaneous Receipts			 	 -
Total receipts		20,906.76	 (29.85)	 20,876.91
Total funds available		20,966.12	 (29.85)	 20,936.27
Expenditures:				
Construction		-	-	-
Maintenance and repair		10,497.35	(10,497.35)	-
Miscellaneous		-	 10,467.50	 10,467.50
Total expenditures		10,497.35	 (29.85)	 10,467.50
Balance, December 31, 2010	\$	10,468.77	\$ _	\$ 10,468.77

Notes to Form MS-991 and Report of Act 44 Tax Fund With Adjustments are an integral part of this report.

### 1. Criteria

- A. *The Vehicle Code* prescribes criteria for liquid fuels program funds (75 Pa C.S. § 9010). The Pennsylvania Department of Transportation's *Publication 9* provides more specific policies and procedures to counties for the administration and reporting of the liquid fuels program funds. In the event of any discrepancies between the two, the legislation governs.
  - (1) Funds received by the counties must be deposited in a special fund designated as the County Liquid Fuels Tax Fund and no other money may be deposited and commingled. Money should be invested to earn interest until expended.
    - For purposes of payments under (2), below, the county may borrow and place in the special fund money not in excess of the liquid fuels tax funds to be received during the current calendar year.

(2) Payments from the special fund may be used for:

- construction, reconstruction, maintenance and repair of roads, highways, bridges and curb ramps from a road or highway to provide for access by individuals with disabilities consistent with Federal and State law;
- property damages and compensation of viewers for services in eminent domain proceedings involving roads, highways, and bridges;
- construction, reconstruction, operation and maintenance of publicly owned ferryboat operations;
- interest and principal payments on road, bridge, or publicly owned ferryboat operation bonds or sinking fund charges;
- acquisition, maintenance, repair and operation of traffic signs and signals;
- erection and maintenance of stop and go signal lights, blinkers and other like traffic control devices;
- indirect costs, including benefit costs, overhead and other administrative charges for those county employees directly engaged in eligible projects, not to exceed 10 percent of the yearly allocation to the county; and

#### 1. <u>Criteria (continued)</u>

- individual vehicle liability insurance for equipment purchased under the fund, not to exceed 10 percent of the yearly allocation to the county.
- (3) Counties may not make expenditures from the special fund for new construction on roads, bridges, curb ramps, or publicly owned ferryboat operations without the approval of the plans for construction by the Pennsylvania Department of Transportation. And, counties may not allocate money from the special fund to political subdivisions within the county until the application and the contracts or plans for the proposed expenditures have been made on a form prescribed by the Pennsylvania Department of Transportation.
- (4) Counties may encumber current funds for future road and bridge construction, reconstruction, and maintenance projects including viable municipal projects. Counties must redistribute any unencumbered balance in the special fund to political subdivisions if the unencumbered balance is more than the county's receipts during the preceding twelve month period.
- (5) Counties must submit a report to the Pennsylvania Department of Transportation by January 15 for the period ending December 31 on prescribed Form MS-991, The Report of County Liquid Fuels Tax Fund, showing the receipts and expenditures of the money received by the county from the Commonwealth. Upon failure to file the report or instances of any non-compliant payments, allocations, or expenditures, the Pennsylvania Department of Transportation will withhold further funding until the delinquent report is filed, the money is allocated, or the expenditures for the prior 12 months are approved.
- B. *The Vehicle Code*, as recently amended by Act 44 of 2007 (July 18, 2007, P.L. 169), prescribes the Pennsylvania Department of Transportation with oversight authority of the Act 44 funds distributed to the counties from the Pennsylvania Turnpike Commission's annual contribution of \$5,000,000 to the Commonwealth's Motor License Fund. The County's Act 44 Tax Fund is used to account for the distribution made to the county from the Department of Transportation and the payments made for construction and maintenance of county-owned bridges.

#### 1. <u>Criteria (continued)</u>

#### **Basis Of Presentation**

In accordance with reporting requirements prescribed by the Pennsylvania Department of Transportation, the Report of County Liquid Fuels Tax Fund With Adjustments and the Report of Act 44 Tax Fund With Adjustments do not constitute complete financial presentations of the county's assets, liabilities, expenses, and fund balance but include the receipts, expenditures, and fund balances of the County Liquid Fuels Tax Fund and the County Act 44 Tax Fund, respectively.

The Pennsylvania Department of Transportation prescribes that the county report the following on the MS-991 form, *Report of County Liquid Fuels Tax Fund*:

- A. The balance in the County Liquid Fuels Tax Fund at the beginning of the report calendar year.
- B. Receipts which must be itemized and include interest, reimbursable agreements, and miscellaneous items such as loans, sale of salvageable material, and damage claims to road or bridge property.

Refer to the related Notes: Note 3, Interest Earnings; Note 5 Reimbursable Agreements; and Note 6, Miscellaneous Receipts.

- C. Accounts receivable (to be realized within 60 days of the year end).
- D. Total Liquid Fuels Tax funds available for expenditure and encumbrances.
- E. Expenditures for county-owned roads, highways, and bridges.

Refer to related Note: Note 7, Deposit In Error.

- F. Accounts payable (accrued wages, accrued payroll taxes, and accounts payable vendors to be realized within 60 days of the year end).
- G. The balance in the fund at the close of the report calendar year.
- H. Encumbered and unencumbered balances on hand at the close of the report calendar year.

### 2. <u>Deposits</u>

*The County Code*, Title 16 P.S § 17067, authorizes the county 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 from institutions having their principal place of business in or outside the Commonwealth of Pennsylvania that are insured by the FDIC or other like insurance. 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, 2010. 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 county's name.

### 2. <u>Deposits (Continued)</u>

#### Fund Balance

The fund balance for the Liquid Fuels Tax Fund consists of the following:

Cash

\$11,203.16

The fund balance for the Act 44 Tax Fund consists of the following:

Cash

\$10,468.77

#### 3. Interest Earnings

Our examination disclosed that the county deposited idle liquid fuels tax money in interest-bearing accounts which earned \$54.98 during 2010, thus providing additional funds for road maintenance and repairs.

Additionally, the county deposited idle Act 44 tax money in an interest-bearing account which earned \$.97 during 2010, thus providing additional funds for road maintenance and repairs.

4. <u>Adjustments</u>

#### <u>MS-991</u>

Adjustments were made to "Miscellaneous" and "Accounts payable" because expenditures of \$10,467.50 were misclassified.

An adjustment of \$(47,571.22) was made to "Unpaid encumbrances" because there were no unpaid encumbrances.

### 4. Adjustments (Continued)

#### <u>Act 44</u>

An adjustment of \$(29.85) was made to "Act 44 Funds" because the Act 44 Funds received were overstated.

An adjustment of (10,497.35) was made to "Maintenance and repair" because miscellaneous expenditures of 10,467.50 were misclassified and these expenditures were overstated by 29.85.

An adjustment of \$10,467.50 was made to "Miscellaneous" because these expenditures were misclassified as maintenance and repair.

#### 5. <u>Reimbursable Agreements</u>

During our examination, we noted that the county entered into a reimbursement agreement with the Department of Transportation for bridge inspections. During our current examination period, the county received \$4,924.73 for bridge inspections as a result of this agreement. As of December 31, 2010, there were no reimbursements due the Liquid Fuels Tax Fund.

#### 6. <u>Miscellaneous Receipts</u>

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

Source	Description	Amount
Commonwealth of Pennsylvania Act 44 Tax Fund	Deposit in error (Note 7) Transfer for loan payment	\$10,467.50 10,467.50
Total		\$20,935.00

#### 7. <u>Deposit In Error</u>

On March 4, 2010, the county deposited \$10,467.50 into its Liquid Fuels Tax Fund in error. On June 11, 2010, the county transferred this amount from its Liquid Fuels Tax Fund to its Act 44 Tax Fund to correct the deposit in error.

#### 8. Bank Loan

On December 24, 2009, the county borrowed \$100,000.00 from the Commonwealth of Pennsylvania to pave the courthouse access road. The term of the loan was for ten years at an interest rate of 1.625 percent. Principal and interest payments of \$10,915.35 are due annually.

During the current examination period the county paid principal of \$28,326.41 and interest of \$4,419.64 from the Liquid Fuels Tax Fund. These amounts are reflected in construction on the 2010 Form MS-991. Additionally, the county transferred \$10,467.50 from its Act 44 Tax Fund to its Liquid Fuels Tax Fund for reimbursement of the first loan payment (see Finding). The outstanding balance of the loan as of December 31, 2010 was \$71,673.59, plus interest.



## FOREST COUNTY LIQUID FUELS TAX FUND AND ACT 44 TAX FUND FINDING AND RECOMMENDATIONS FOR THE YEAR ENDED DECEMBER 31, 2010

#### Finding - Nonpermissible Expenditure

Our examination disclosed that the county transferred \$10,467.50 on June 16, 2010 from its Act 44 Tax Fund to its Liquid Fuels Tax Fund for the reimbursement of a loan payment. The loan was for paving the courthouse access road, which is a nonpermissible expenditure from the Act 44 Tax Fund.

The Department of Transportation's *Publication 9*, Chapter Four, Section 4.2, states:

Act 44 provides for an annual allocation to all counties that own public bridges. These allocations are made in December of each year.

The allocations must be deposited into a separate fund (not the County Liquid Fuels Fund), from which payments may be made for the maintenance and construction of county-owned bridges.

The Department of Transportation has been statutorily authorized to promulgate regulations concerning the administration of Act 44 Tax Fund money and has determined that certain items, including loan payments for paving courthouse access roads, are outside the scope of permissible expenditures.

The failure to comply with the Act 44 Tax Fund and the Department of Transportation's Regulations could result in the county having to reimburse \$10,467.50 to its Act 44 Tax Fund.

#### Recommendations

We recommend that the county reimburse \$10,467.50 to its Act 44 Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the county comply with the Act 44 Tax Fund and the Department of Transportation's Regulations regarding permissible expenditures.

## FOREST COUNTY LIQUID FUELS TAX FUND AND ACT 44 TAX FUND FINDING AND RECOMMENDATIONS FOR THE YEAR ENDED DECEMBER 31, 2010

#### Finding - Nonpermissible Expenditure (Continued)

#### Management's Response

The county officials stated:

During a recent audit of the 2010 Liquid Fuels and the Act 44 Funds a discrepancy was found. The County of Forest used Act 44 funds for the Courthouse Drive Project. Prior to initiating the project, we discussed the possibilities with two employees from PennDOT. We were told that Act 44 money could be used for the project. Subsequent to the audit, we contacted the PennDOT employee and he acknowledged the conversation and confirmed our account of the meeting. He also indicated that he would follow up with a letter regarding the conversation. To date, we have not received the letter.

#### Auditor's Conclusion

Act 44 Tax Funds may only be used for maintenance and construction of county-owned bridges. The Department of Transportation will determine if the municipality is required to reimburse \$10,467.50 to its Liquid Fuels Tax Fund. During our next examination we will determine if the municipality complied with our recommendations.

# FOREST COUNTY LIQUID FUELS TAX FUND AND ACT 44 TAX FUND SUMMARY OF EXIT CONFERENCE FOR THE YEAR ENDED DECEMBER 31, 2010

An exit conference was held November 3, 2011. Those participating were:

## FOREST COUNTY

The Honorable Basil D. Huffman, Chairman of the Board of Commissioners

The Honorable Robert J. Snyder, Jr., Commissioner

Ms. Virginia M. Call, Chief Clerk

# DEPARTMENT OF THE AUDITOR GENERAL

Ms. Ortenzia M. Keller, Auditor

Mr. Joel S. Schwartz, Auditor

Mr. Theodore R. Prorok, Audit Supervisor

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



# FOREST COUNTY LIQUID FUELS TAX FUND AND ACT 44 TAX FUND REPORT DISTRIBUTION FOR THE YEAR ENDED DECEMBER 31, 2010

This report was initially distributed to:

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

> Forest County Courthouse 526 Elm Street Tionesta, PA 16353

The Honorable Basil D. Huffman	Chairman of the Board of Commissioners
The Honorable Pamela F. Millin	Treasurer
Ms. Virginia M. Call	Chief Clerk

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, 318 Finance Building, Harrisburg, PA 17120. To view this report online or to contact the Department of the Auditor General, please access our web site at www.auditorgen.state.pa.us.