

# ATTESTATION ENGAGEMENT

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Luzerne County

Pennsylvania

40-000

Liquid Fuels, ACT 44,  
And ACT 89 Tax Funds

For the Period

January 1, 2015 to December 31, 2016

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September 2017



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  
Secretary  
Department of Transportation  
Harrisburg, PA 17120

We examined the accompanying Forms MS-991 With Adjustments for the Liquid Fuels Tax Fund and the Reports of Act 44 and Act 89 Tax Funds With Adjustments of Luzerne County for the period January 1, 2015 to December 31, 2016. The county's management is responsible for presenting the Forms MS-991 and the Reports of Act 44 and Act 89 Tax Funds. Our responsibility is to express an opinion on the Forms MS-991 With Adjustments and the Reports of Act 44 and Act 89 Tax Funds 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. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Forms MS-991 and Reports of Act 44 and Act 89 Tax Funds are fairly stated based on the criteria, in all material respects. An examination involves performing procedures to obtain evidence about the Forms MS-991 and Reports of Act 44 and Act 89 Tax Funds. The nature, timing and extent of the procedures selected depend on our judgement, including an assessment of the risks of material misstatement of the Forms MS-991 and Reports of Act 44 and Act 89 Tax Funds, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide 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, Act 44, and Act 89 Tax Funds 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)

As described in Finding No. 1 and Note 4, the adjustments included on the Forms MS-991 With Adjustments and the Reports of Act 44 and Act 89 Tax Funds With Adjustments are made by the Department of the Auditor General.

As discussed in Finding No. 2 of this report, the county deposited the June 2015 Act 89 allocation of \$99,884.83 into the Aid System to Road and Bridges Account, which is in noncompliance with the Department of Transportation's *Publication 9*.

In our opinion, except for the matter discussed in the preceding paragraph, the Forms MS-991 With Adjustments and the Reports of Act 44 and Act 89 Tax Funds With Adjustments present, in all material respects, the information required by the Pennsylvania Department of Transportation for the Liquid Fuels, Act 44, and Act 89 Tax Funds of Luzerne County for the period January 1, 2015 to December 31, 2016, 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-991 and the Reports of Act 44 and Act 89 Tax Funds; 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-991 and the Reports of Act 44 and Act 89 Tax Funds. 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-991 and the Reports of Act 44 and Act 89 Tax Funds 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-991 and the Reports of Act 44 and Act 89 Tax Funds 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-991 and the Reports of Act 44 and Act 89 Tax Funds 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 the internal control was for the limited purpose of expressing an opinion on whether the Forms MS-991 and the Reports of Act 44 and Act 89 Tax Funds 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. We did identify a certain deficiency in internal control, described in the finding listed below, that we consider to be a material weakness in internal control:

- Failure To Properly Prepare Form MS-991.

As part of obtaining reasonable assurance about whether the Forms MS-991 and the Reports of Act 44 and Act 89 Tax Funds are free from material misstatement, we performed tests of 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 Forms MS-991 and the Reports of Act 44 and Act 89 Tax Funds. 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*:

- Failure To File 2015 And 2016 Reports Of Act 89 Tax Fund And Act 89 Allocations Deposited Into The Aid System to Roads and Bridges Account And The Act 44 Tax Fund

The purpose of this report is to determine whether the county's Liquid Fuels Tax Fund, Act 44 Tax Fund, and Act 89 Tax Fund money is spent in accordance with the laws and regulations identified in the Background section of this report and the Department of Transportation's *Publication 9*. This report is not suitable for any other purpose.

We appreciate the courtesy extended by 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.



Eugene A. DePasquale  
Auditor General

August 22, 2017

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LUZERNE COUNTY  
LIQUID FUELS, ACT 44,  
AND ACT 89 TAX FUNDS  
BACKGROUND  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

Background

*The Vehicle Code* makes provisions and provides funding for County Liquid Fuels, Act 44, and Act 89 Programs. The Pennsylvania Department of Transportation has regulatory administration and oversight of the funds supporting these county programs. Counties are required to comply with those provisions and to report annually.

*The Vehicle Code* imposes a state tax on liquid fuels and fuels used or sold and delivered by distributors within the Commonwealth (75 Pa. C.S. § 9004(a)). One-half cent of the tax collected on each gallon of liquid fuels is deposited in the Commonwealth's Liquid Fuels Tax Fund. The Vehicle Code further provides for the disposition and use of this tax, including the allocations to counties in June and December of each year to fund construction, reconstruction, maintenance and repair of county roads, streets and bridges. The allocation to the respective counties is made in the ratio that the average amount returned to each county during the three preceding years bears to the average amount returned to all counties during the three preceding years (75 Pa C.S. § 9010).

*The Vehicle Code*, as amended by Act 44 of 2007 (July 18, 2007, P.L.169), requires the Pennsylvania Turnpike Commission to make annual contributions for the benefit of the Pennsylvania Department of Transportation's Motor License Fund, and further requires the Department of Transportation to distribute \$5,000,000 of the annual contribution to counties (75 Pa. C.S. § 8915.6). The annual distribution to counties is determined based upon the ratio of square footage of deck area of a county's county-owned bridges to the total square footage of deck area of county-owned bridges throughout the Commonwealth. The reporting of the square footage of deck area of a county's county-owned bridges is required as part of the National Bridge Inspection Standards Program.

*The Vehicle Code*, as amended by Act 89 of 2013 (November 25, 2013, P.L. 974, No.89) provides for semi-annual allocations to all counties that own public bridges (75 Pa. C.S. § 9502(a)(2)(iv)). These allocations are made on the first business day of June and December each year. The Commonwealth allocates the funds available through Act 89 to counties based upon the ratio of square footage of deck area of a county's county-owned bridges to the total square footage of deck area of county-owned bridges throughout the Commonwealth. The reporting of the square footage of deck area of a county's county-owned bridges is required as part of the National Bridge Inspection Standards Program.

LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
2015 FORM MS-991 WITH ADJUSTMENTS

	<u>Reported</u>	<u>Adjustments (Finding No. 1)</u>	<u>Adjusted Amount</u>
Balance, January 1, 2015	\$ 419,276.97	\$ -	\$ 419,276.97
<u>Receipts:</u>			
State allocations	1,045,277.78	-	1,045,277.78
Interest (Note 3)	100.77	-	100.77
Reimbursable agreements	24,461.84	(24,461.84)	-
Miscellaneous (Note 5)	287,572.73	24,461.84	312,034.57
Accounts receivable	-	-	-
Accounts receivable	-	-	-
Total receipts	<u>1,357,413.12</u>	<u>-</u>	<u>1,357,413.12</u>
Total funds available	<u>1,776,690.09</u>	<u>-</u>	<u>1,776,690.09</u>
<u>Expenditures:</u>			
Construction	-	-	-
Maintenance and repair	842,946.54	20,003.83	862,950.37
Administrative	-	-	-
Grants to political	-	-	-
Accounts payable	-	-	-
subdivisions	-	-	-
Accounts payable	-	-	-
Miscellaneous	-	-	-
Total expenditures	<u>842,946.54</u>	<u>20,003.83</u>	<u>862,950.37</u>
Balance, December 31, 2015	933,743.55	(20,003.83)	913,739.72
Unpaid encumbrances	<u>-</u>	<u>-</u>	<u>-</u>
Unencumbered balance, December 31, 2015	<u>\$ 933,743.55</u>	<u>\$ (20,003.83)</u>	<u>\$ 913,739.72</u>

Notes To Forms MS-991 and Reports of Act 44 and Act 89 Tax Funds With Adjustments are an integral part of this report.

LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
2016 FORM MS-991 WITH ADJUSTMENTS

	<u>Reported</u>	<u>Adjustments (Finding No. 1)</u>	<u>Adjusted Amount</u>
Balance, January 1, 2016	\$ 933,743.55	\$ (20,003.83)	\$ 913,739.72
<u>Receipts:</u>			
State allocations	1,026,495.64	-	1,026,495.64
Interest (Note 3)	713.59	-	713.59
Reimbursable agreements	-	-	-
Miscellaneous (Note 5)	84,606.84	-	84,606.84
Accounts receivable	-	-	-
Accounts receivable	-	-	-
Total receipts	<u>1,111,816.07</u>	<u>-</u>	<u>1,111,816.07</u>
Total funds available	<u>2,045,559.62</u>	<u>(20,003.83)</u>	<u>2,025,555.79</u>
<u>Expenditures:</u>			
Construction	21,540.90	-	21,540.90
Maintenance and repair	648,814.02	94,867.86	743,681.88
Administrative	-	-	-
Grants to political	-	-	-
Accounts payable	-	-	-
subdivisions	-	-	-
Accounts payable	780,000.00	(780,000.00)	-
Miscellaneous	11,724.72	(11,724.72)	-
Total expenditures	<u>1,462,079.64</u>	<u>(696,856.86)</u>	<u>765,222.78</u>
Balance, December 31, 2016	583,479.98	676,853.03	1,260,333.01
Unpaid encumbrances (Note 7)	<u>-</u>	<u>780,000.00</u>	<u>780,000.00</u>
Unencumbered balance, December 31, 2016	<u>\$ 583,479.98</u>	<u>\$ (103,146.97)</u>	<u>\$ 480,333.01</u>

Notes To Forms MS-991 and Reports of Act 44 and Act 89 Tax Funds With Adjustments are an integral part of this report.



LUZERNE COUNTY  
2015 REPORT OF ACT 44 TAX FUND  
WITH ADJUSTMENTS

	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
Balance, January 1, 2015	\$ -	\$ 383,719.14	\$ 383,719.14
<u>Receipts:</u>			
Act 44 Funds	-	-	-
Interest (Note 3)	52.33	-	52.33
Reimbursable agreements	-	-	-
Miscellaneous (Note 5)	507,747.22	(383,719.14)	124,028.08
Accounts receivable	-	-	-
Accounts receivable	-	-	-
	<u>507,799.55</u>	<u>(383,719.14)</u>	<u>124,080.41</u>
Total receipts	<u>507,799.55</u>	<u>(383,719.14)</u>	<u>124,080.41</u>
Total funds available	<u>507,799.55</u>	<u>-</u>	<u>507,799.55</u>
<u>Expenditures:</u>			
Construction	-	-	-
Accounts payable	-	-	-
Maintenance and repair	-	-	-
Accounts payable	-	-	-
Miscellaneous (Engineering Fees)	23,675.39	-	23,675.39
	<u>23,675.39</u>	<u>-</u>	<u>23,675.39</u>
Total expenditures	<u>23,675.39</u>	<u>-</u>	<u>23,675.39</u>
Balance, December 31, 2015	<u>\$ 484,124.16</u>	<u>\$ -</u>	<u>\$ 484,124.16</u>

Notes To Forms MS-991 and Reports of Act 44 and Act 89 Tax Funds With Adjustments are an integral part of this report.

LUZERNE COUNTY  
2016 REPORT OF ACT 44 TAX FUND  
WITH ADJUSTMENTS

	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Balance, January 1, 2016	\$ 484,124.16	\$ -	\$ 484,124.16
<u>Receipts:</u>			
Act 44 Funds	268,255.37	-	268,255.37
Interest (Note 3)	318.03	-	318.03
Reimbursable agreements	-	-	-
Miscellaneous (Note 5)	284,558.15	-	284,558.15
Accounts receivable	-	-	-
Accounts receivable	-	-	-
	<u>553,131.55</u>	<u>-</u>	<u>553,131.55</u>
Total receipts			
	<u>1,037,255.71</u>	<u>-</u>	<u>1,037,255.71</u>
Total funds available			
<u>Expenditures:</u>			
Construction	-	-	-
Accounts payable	-	-	-
Maintenance and repair	243,295.57	-	243,295.57
Accounts payable	-	-	-
Miscellaneous	-	-	-
	<u>243,295.57</u>	<u>-</u>	<u>243,295.57</u>
Total expenditures			
	<u>\$ 793,960.14</u>	<u>\$ -</u>	<u>\$ 793,960.14</u>
Balance, December 31, 2016			

Notes To Forms MS-991 and Reports of Act 44 and Act 89 Tax Funds With Adjustments are an integral part of this report.

LUZERNE COUNTY  
2015 REPORT OF ACT 89 TAX FUND  
WITH ADJUSTMENTS

	Reported	Adjustments	Adjusted Amount
Balance, January 1, 2015	\$ -	\$ -	\$ -
<u>Receipts:</u>			
Act 89 Funds	-	-	-
Interest (Note 3)	-	-	-
Reimbursable agreements	-	-	-
Miscellaneous	-	-	-
	-	-	-
Total receipts	-	-	-
Total funds available	-	-	-
<u>Expenditures:</u>			
Construction	-	-	-
Maintenance and repair	-	-	-
Miscellaneous	-	-	-
	-	-	-
Total expenditures	-	-	-
Balance, December 31, 2015	\$ -	\$ -	\$ -

Notes To Forms MS-991 and Reports of Act 44 and Act 89 Tax Funds With Adjustments are an integral part of this report.

LUZERNE COUNTY  
2016 REPORT OF ACT 89 TAX FUND  
WITH ADJUSTMENTS

	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Balance, January 1, 2016	\$ -	\$ -	\$ -
<u>Receipts:</u>			
Act 89 Funds	-	-	-
Interest (Note 3)	-	-	-
Reimbursable agreements	-	-	-
Miscellaneous	-	-	-
Total receipts	<u>-</u>	<u>-</u>	<u>-</u>
Total funds available	<u>-</u>	<u>-</u>	<u>-</u>
<u>Expenditures:</u>			
Construction	-	-	-
Maintenance and repair	-	-	-
Miscellaneous	-	-	-
Total expenditures	<u>-</u>	<u>-</u>	<u>-</u>
Balance, December 31, 2016	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>

Notes To Forms MS-991 and Reports of Act 44 and Act 89 Tax Funds With Adjustments are an integral part of this report.

LUZERNE COUNTY  
LIQUID FUELS, ACT 44, AND ACT 89 TAX FUNDS  
NOTES TO FORMS MS-991 AND REPORTS OF  
ACT 44 AND ACT 89 TAX FUNDS WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

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 individual vehicle liability insurance for equipment purchased under the fund, not to exceed 10 percent of the yearly allocation to the county.

LUZERNE COUNTY  
LIQUID FUELS, ACT 44, AND ACT 89 TAX FUNDS  
NOTES TO FORMS MS-991 AND REPORTS OF  
ACT 44 AND ACT 89 TAX FUNDS WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

1. Criteria (Continued)

- (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 31 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 may 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 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.

LUZERNE COUNTY  
LIQUID FUELS, ACT 44, AND ACT 89 TAX FUNDS  
NOTES TO FORMS MS-991 AND REPORTS OF  
ACT 44 AND ACT 89 TAX FUNDS WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

1. Criteria (Continued)

(1) Funds received by the counties must be deposited in a special fund designated as the County Act 44 Fund and no other money may be deposited and commingled. (Note: Act 44 and Act 89 Funds may be deposited in a single account. However, the county must account for these funds independently for auditing). 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 public bridges for which the county is legally responsible.
- Interest and principal payments on bridge loans and bonds or sinking fund charges for such bonds becoming due within that current calendar year.
- County Engineer's salary and benefit costs for bridge work (that portion of the total calculated to be relevant to bridge work only).
- Engineering fees related to bridge work (fees in excess of 10% of the total contract price must be documented and justified to the satisfaction of the District Municipal Services Office).
- Liability insurance for bridge equipment and vehicles when the named beneficiary is the entity's Act 44 Fund.
- Inspection costs associated with bridges.
- Purchase of right-of-way for bridge construction, reconstruction, or maintenance.

LUZERNE COUNTY  
LIQUID FUELS, ACT 44, AND ACT 89 TAX FUNDS  
NOTES TO FORMS MS-991 AND REPORTS OF  
ACT 44 AND ACT 89 TAX FUNDS WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

1. Criteria (Continued)

- (3) For bridge maintenance/preservation activities, the county must confer with a District Municipal Services Representative to determine if Department of Transportation approval is required. All rehabilitations, replacements or any other work that affects the carrying capacity of the structure or the waterway areas requires the approval of the Department of Transportation.
- (4) In order to receive Act 44 funds as scheduled, each county must submit an annual report showing the receipts and expenditures for the preceding 12 months. The use of the funds must be in compliance with the Act. Failure to do so may result in the county's not receiving allocations until such deficiencies are resolved.

C. *The Vehicle Code*, as amended by Act 89 of 2013 (November 25, 2013, P.L. 169), prescribes the Pennsylvania Department of Transportation with oversight authority of the Act 89 funds distributed to the counties from the Department of Transportation. The County's Act 89 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) Funds received by the counties must be deposited in a special fund designated as the County Act 89 Fund and no other money may be deposited and commingled. (Note: Act 89 and Act 44 Funds may be deposited in a single account. However, the county must account for these funds independently for auditing). 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 public bridges for which the county is legally responsible.
- Interest and principal payments on bridge loans and bonds or sinking fund charges for such bonds becoming due within that current calendar year.
- County Engineer's salary and benefit costs for bridge work (that portion of the total calculated to be relevant to bridge work only).



LUZERNE COUNTY  
LIQUID FUELS, ACT 44, AND ACT 89 TAX FUNDS  
NOTES TO FORMS MS-991 AND REPORTS OF  
ACT 44 AND ACT 89 TAX FUNDS WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

1. Criteria (Continued)

- Engineering fees related to bridge work (fees in excess of 10% of the total contract price must be documented and justified to the satisfaction of the District Municipal Services Office).
  - Liability insurance for bridge equipment and vehicles when the named beneficiary is the entity's Act 89 Fund.
  - Inspection costs associated with bridges.
  - Purchase of right-of-way for bridge construction, reconstruction, or maintenance.
- (3) For bridge maintenance/preservation activities, the county must confer with a District Municipal Services Representative to determine if Department of Transportation approval is required. All rehabilitations, replacements or any other work that affects the carrying capacity of the structure or the waterway areas requires the approval of the Department of Transportation.
- (4) In order to receive Act 89 funds as scheduled, each county must submit an annual report showing the receipts and expenditures for the preceding 12 months. The use of the funds must be in compliance with the Act. Failure to do so may result in the county's not receiving allocations until such deficiencies are resolved.

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 Reports of Act 44 and Act 89 Tax Funds 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 and Act 89 Tax Funds, respectively.

LUZERNE COUNTY  
LIQUID FUELS, ACT 44, AND ACT 89 TAX FUNDS  
NOTES TO FORMS MS-991 AND REPORTS OF  
ACT 44 AND ACT 89 TAX FUNDS WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

1. Criteria (Continued)

The Pennsylvania Department of Transportation prescribes that the county report the following on the Form MS-991, *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 the County's Liquid Fuels Tax Fund allocations, 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, 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.
- 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.

*Refer to the related Note: Note 7, Encumbrances.*

The Pennsylvania Department of Transportation prescribes that the county report the following on the Reports Of Act 44 Tax Fund and Act 89 Tax Fund:

- A. The balance in the County Act 44 and Act 89 Tax Fund at the beginning of the report calendar year.

LUZERNE COUNTY  
LIQUID FUELS, ACT 44, AND ACT 89 TAX FUNDS  
NOTES TO FORMS MS-991 AND REPORTS OF  
ACT 44 AND ACT 89 TAX FUNDS WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

1. Criteria (Continued)

- B. Receipts which must be itemized and include the County's Act 44 and Act 89 allocations, 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, Miscellaneous Receipts.*

- C. Total Liquid Fuels Tax funds available for expenditure and encumbrances.
- D. Expenditures for county-owned bridges.
- E. The balance in the fund at the close of the report calendar year.

2. Deposits

*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 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.

LUZERNE COUNTY  
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JANUARY 1, 2015 TO DECEMBER 31, 2016

2. Deposits (Continued)

There were no deposits exposed to custodial credit risk as of December 31, 2016. Custodial credit risk, as defined by GASB No. 40, as amended, 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.

Fund Balance

The fund balance for the Liquid Fuels Tax Fund as of December 31, 2016 consists of the following:

Cash	<u>\$1,260,333.01</u>
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The fund balance for the Act 44 Tax Fund as of December 31, 2016 consists of the following:

Cash	<u>\$793,960.14</u>
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The fund balance for the Act 89 Tax Fund as of December 31, 2016 was \$0.00.

3. Interest Earnings

Our examination disclosed that the county deposited idle liquid fuels tax money in an interest-bearing account which earned \$100.77 during 2015, and \$713.59 during 2016 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 \$52.33 during 2015 and \$318.03 during 2016, thus providing additional funds for bridge maintenance and repairs.

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4. Adjustments

2015 Report of Act 44 Tax Fund

An adjustment of \$383,719.14 was made to “Balance, January 1, 2015” because an incorrect fund balance was reported.

An adjustment of \$(383,719.14) was made to “Miscellaneous” because these receipts were overstated.

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>2015</u>	<u>2016</u>
Commonwealth of Pennsylvania	Severe weather assistance	\$164,000.00	\$ -
Department of Transportation	Turnback allocation	43,800.00	43,800.00
Commonwealth of Pennsylvania	Lighting reimbursement	101,174.23	39,095.18
Local business	Scrap	1,130.00	-
Local business	Fees and licenses	1,930.34	1,711.66
Total		<u>\$312,034.57</u>	<u>\$84,606.84</u>

The following miscellaneous receipts were deposited into the Act 44 Tax Fund during the examination period:

<u>Source</u>	<u>Description</u>	<u>2015</u>	<u>2016</u>
Department of Transportation	Act 89 allocations	\$124,028.08	\$219,897.13
General Fund	Deposit in error (see Note 6)	-	64,661.02
Totals		<u>\$124,028.08</u>	<u>\$284,558.15</u>

LUZERNE COUNTY  
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ACT 44 AND ACT 89 TAX FUNDS WITH ADJUSTMENTS  
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6. Deposit In Error

On February 26, 2017, the county deposited \$64,661.02 into its Act 44 Tax Fund in error. On March 9, 2017, the county transferred this amount from its Act 44 Tax Fund to its General Fund to correct the deposit in error.

7. Encumbrances

As of December 31, 2016, \$780,000.00 was encumbered for county project No. 16-40-000-02.

LUZERNE COUNTY  
LIQUID FUELS, ACT 44,  
AND ACT 89 TAX FUNDS  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

**Finding No. 1 - Failure To Properly Prepare Form MS-991**

Our examination disclosed that there were errors made in the preparation of the county's 2015 and 2016 Forms MS-991. These errors resulted in the following adjustments:

2015 Form MS-991

- Adjustments were made to “Reimbursable agreements” and “Miscellaneous” because receipts of \$24,461.84 were misclassified.
- An adjustment of \$20,003.83 was made to “Maintenance and repair” because checks that were issued in 2015 and were outstanding as of December 31, 2015 were incorrectly reported as expenditures in 2016.

2016 Form MS-991

- An adjustment of \$(20,003.83) was made to “Balance, January 1, 2016” to reflect the adjustment made to the fund balance in 2015.
- An adjustment of \$94,867.86 was made to “Maintenance and repair” because 2015 outstanding checks totaling \$20,003.83 were incorrectly reported as 2016 expenses and 2016 outstanding checks totaling \$103,146.97 were not reported. Additionally, \$11,724.72 of these expenditures were misclassified as miscellaneous.
- An adjustment of (780,000.00) was made to “Accounts Payable” because encumbrance No. 16-40-000-02 was misclassified.
- An adjustment of \$(11,724.72) was made to “Miscellaneous” because expenditures for maintenance and repair were misclassified.
- An adjustment of \$780,000.00 was made to “Unpaid encumbrances” because encumbrance No. 16-40-000-02 was misclassified as accounts payable.

Good internal controls ensure that the county completes its Forms MS-991 accurately and completely. The failure to properly complete Forms MS-991 increases the risk that errors or misappropriations may occur and remain undetected.

LUZERNE COUNTY  
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FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

**Finding No. 1 - Failure To Properly Prepare Form MS-991 (Continued)**

Recommendation

We recommend that the county ensure that its Forms MS-991 are complete and accurate.

Management's Response

The county engineer stated:

We will do a better job of preparing the required forms.

Auditor's Conclusion

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



LUZERNE COUNTY  
LIQUID FUELS, ACT 44,  
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FINDINGS AND RECOMMENDATIONS  
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**Finding No. 2 - Failure To File 2015 And 2016 Reports Of Act 89 Tax Fund And Act 89 Allocations Deposited Into the Aid System to Road And Bridges Account And The Act 44 Tax Fund**

Our examination disclosed that the county failed to file its 2015 and 2016 Reports of Act 89 Tax Fund with the Department of Transportation as required by the Department of Transportation's *Publication 9*.

The Department of Transportation's *Publication 9*, Chapter Six, Section 6.4 states:

In order to receive Act 89 funds as scheduled, each county must submit an annual report showing the receipts and expenditures for the preceding 12 months. . . . The use of funds must be in compliance with the Act. . . . Failure to do so may result in the county not receiving allocations until such deficiencies are resolved.

Additionally, the county deposited its Act 89 Tax Fund allocation for June 2015 of \$99,884.83 into its Aid System to Roads and Bridges Account and its December 2015 Act 89 allocation of \$124,028.08, June 2016 Act 89 allocation of \$108,934.46, and December 2016 Act 89 allocation of \$110,962.67 into its Act 44 Tax Fund without maintaining a clear audit trail, which is in noncompliance with the Department of Transportation's *Publication 9*.

The Department of Transportation's *Publication 9*, Chapter 6, Section 6.5 states:

Each county must deposit the Act 89 funds it receives into a special fund called the County Act 89 Fund, which may be used only for those purposes permitted by the Act. . . . (NOTE: Act 89 and Act 44 funds may be deposited in a single account. However, the county must account for these funds independently for auditing.)

Good internal control ensure that the county completes its Report of Act 89 Tax Fund accurately and completely. The failure to properly complete and file these forms with the Department of Transportation increases the risk that errors or misappropriations may occur and remain undetected. Additionally, when the county commingles Act 89 Tax Fund money with Act 44 Tax Fund money or other funds without maintaining a clear audit trail, the risk that errors for misappropriations may occur and remain undetected increases significantly.

We further noted that the county deposited its 2014 Act 89 Tax Fund allocation of \$105,853.11 into its Act 44 Tax Fund on December 4, 2014, which was prior to our examination period.

LUZERNE COUNTY  
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**Finding No. 2 - Failure To File 2015 And 2016 Reports Of Act 89 Tax Fund And Act 89 Allocations Deposited Into the Aid System to Road And Bridges Account And The Act 44 Tax Fund (Continued)**

The failure to comply with the Department of Transportation's *Publication 9* could result in the county having to reimburse \$99,884.83 to its Act 89 Fund.

Recommendations

We recommend that the county reimburse \$99,884.83 to its Act 89 Fund upon official notification by the Department of Transportation.

We recommend that the county ensure that its Report of Act 89 Tax Fund are complete and accurate and filed timely with the Department of Transportation

We also recommend that the county account for the Act 44 and Act 89 funds independently for auditing or transfer \$449,778.32 to a separate account that contains only Act 89 Tax Fund money.

Management's Response:

The county engineer stated:

We will do better going forward in completing these reports. This was the first year that our Budget and Finance Department took control of generating the reports.

Auditor's Conclusion:

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

LUZERNE COUNTY  
LIQUID FUELS, ACT 44,  
AND ACT 89 TAX FUNDS  
SUMMARY OF PRIOR EXAMINATION RECOMMENDATION  
FOR THE PERIOD  
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Summary Of Prior Examination Recommendation

In our prior report we recommended that the county ensure that its Form MS-991 and Report of Act 44 Tax Fund are filed timely with the Department of Transportation.

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

LUZERNE COUNTY  
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SUMMARY OF EXIT CONFERENCE  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

An exit conference was held August 22, 2017. Those participating were:

LUZERNE COUNTY

Mr. Larry Plesh, County Engineer

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Anthony J. Frable Jr., Auditor

Mr. Martin Lawler, Audit Manager

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

LUZERNE COUNTY  
LIQUID FUELS, ACT 44,  
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REPORT DISTRIBUTION  
FOR THE PERIOD  
JANUARY 1, 2015 TO DECEMBER 31, 2016

This report was initially distributed to:

**The Honorable Leslie Richards**  
Secretary  
Department of Transportation

**Luzerne County**  
200 North River Street  
Wilkes-Barre, PA 18711

**The Honorable Linda McClosky Houck**  
Chairman of the Board of Commissioners

**Mr. Larry Plesh**  
County Engineer

**Mr. David Pedri**  
County Manager

This report is a matter of public record and is available online at [www.PaAuditor.gov](http://www.PaAuditor.gov). Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: [news@PaAuditor.gov](mailto:news@PaAuditor.gov).