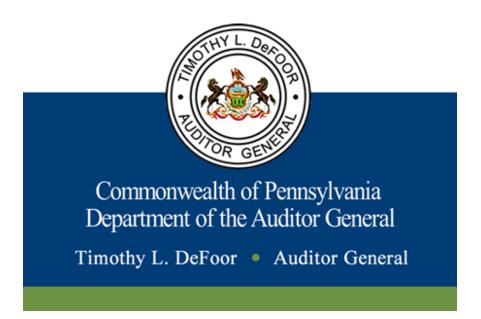
ATTESTATION ENGAGEMENT

Borough of Avondale Chester County, Pennsylvania 15-402 Liquid Fuels Tax Fund For the Period January 1, 2021 to December 31, 2022

November 2023





Commonwealth of Pennsylvania Department of the Auditor General Harrisburg, PA 17120-0018 Facebook: Pennsylvania Auditor General Twitter: @PAAuditorGen www.PaAuditor.gov

TIMOTHY L. DEFOOR AUDITOR GENERAL

Independent Auditor's Report

The Honorable Michael Carroll Secretary Department of Transportation Harrisburg, PA 17120

We examined the accompanying Forms MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Borough of Avondale, Chester County, for the period January 1, 2021 to December 31, 2022. The municipality's management is responsible for presenting the Forms MS-965 in accordance with the criteria described in the Background section of this report and the Department of Transportation's *Publication 9*. 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 involves performing procedures to obtain reasonable assurance about whether the Forms MS-965 are presented in accordance with the criteria described above, in all material respects. An examination involves performing procedures to obtain evidence about the Forms MS-965. 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-965, 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 required to be independent and to meet our other ethical responsibilities in accordance with ethical requirements relating to the engagement.

As discussed in Finding No. 1, \$19,580.00 was removed via wire transfers from the borough's Liquid Fuels Tax Fund bank account during 2021 in response to a fraudulent solicitation. Because the funds were not expended for purposes permitted by the Liquid Fuels Tax Municipal Allocation Law, 72 P.S. § 2615.4, the expenditures are considered nonpermissible expenditures.

Independent Auditor's Report (Continued)

In our opinion, except for the matter discussed in the preceding paragraph, the Forms MS-965 With Adjustments present, in all material respects, the information required by the Pennsylvania Department of Transportation for the Liquid Fuels Tax Fund of the Borough of Avondale, Chester County, for the period January 1, 2021 to December 31, 2022, in accordance with the criteria described in the Background section of this report and the Department of Transportation's *Publication 9*.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that have a material effect on the Forms MS-965; and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the Forms MS-965. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the Forms MS-965 are presented in accordance with the criteria described above and not for the purpose of expressing an opinion on internal control over reporting on the Forms MS-965 or on compliance and other matters; accordingly, we express no such opinions.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Forms MS-965 will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Forms MS-965 will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over reporting on the Forms MS-965 was for the limited purpose of expressing an opinion on whether the Forms MS-965 are presented in accordance with the criteria described above and would not necessarily identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our engagement we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Independent Auditor's Report (Continued)

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

• Nonpermissible Expenditures.

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

• Late Receipt Of Allocation.

The purpose of this report is to determine whether the municipality's Liquid Fuels 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 the Borough of Avondale, Chester County, to us during the course of our examination. If you have any questions, please feel free to contact the Bureau of County Audits at 717-787-1363.

Timothy L. Detoor

Timothy L. DeFoor Auditor General November 9, 2023

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Background

The Liquid Fuels Tax Municipal Allocation Law, Act 655 of 1956, as amended, see also 72 P.S. § 2615.5, et sec., provides municipalities other than counties (i.e., 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 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.

Title 75 Pa.C.S. § 9511 of the Pennsylvania Vehicle Code 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 allocation of Liquid Fuels Tax funds and annual maintenance payments that it receives into a special fund called either 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 such a 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. Department of Transportation's *Publication 9* includes the policies and procedures for the administration of Act 655, as amended, and the Liquid Fuels Tax Fund money. However, if there is a difference between *Publication 9* and any legislation, the legislation shall govern.

To qualify for the annual allocation of Liquid Fuels Tax funds, *Publication 9* indicates that each municipality shall:

- 1. Submit annual reports (MS-965, Actual Use Report, MS-965P, Project and Miscellaneous Receipts, and MS-965S, Record of Checks).
- 2. Make deposits and payments or expenditures in compliance with Act 655 of 1956, as amended. Failure to do so may result in not receiving allocations from PennDOT until all discrepancies are resolved. *Publication 9*, Section 2.6, includes information about investing Liquid Fuels Tax monies, using loan or bond proceeds, and types of receipts into the Liquid Fuels Tax Fund.

Background (Continued)

- 3. Submit the Pennsylvania Department of Community and Economic Development's (DCED) Report of Elected and Appointed Officials by January 31st and the Survey of Financial Condition By March 15th.
- 4. Ensure resolution of all Contractor Responsibility Program (CRP) holds and blocks imposed by the Department of Revenue and the Department of Labor and Industry.
- 5. Ensure resolution of all reimbursements required as a result of audits performed by the Department of the Auditor General or monitoring reviews performed by the Department of Transportation's Financial Consultants.

Criteria

The criteria for the Form MS-965 With Adjustment are described below.

Section 1 of Form MS-965 With Adjustments provides a summary of Liquid Fuels Tax Fund expenditures by category. Categories requiring explanation include:

• Major equipment purchases are purchases of road machinery and road equipment with varying yearly costs in excess of the amounts indicated below:

2019	2020	2021	2022
\$11,100.00	\$11,300.00	\$11,500.00	\$11,800.00

• Minor equipment purchases are purchases of road machinery and road equipment with varying yearly costs that are less than or equal to the amounts indicated below:

2019	2020	2021	2022
\$11,100.00	\$11,300.00	\$11,500.00	\$11,800.00

• Agility projects are exchanges of services with the Department of Transportation.

Background (Continued)

Section 2 of Form MS-965 With Adjustments provides information on the fund balance. Categories requiring explanation include:

- The state allocation is available from the Department of Transportation in March of each year. The amount the municipality receives is based half on its population and half on its road mileage.
- Municipalities that transferred roads from the Commonwealth of Pennsylvania to the municipality through the Highway Transfer Program receive annual turnback allocations in March of each year from the Department of Transportation. Turnback allocations are based on the mileage of the roads transferred.
- Expenditures include the total transferred from Section 1.

Section 3 of Form MS-965 With Adjustments determines if the municipality expended Liquid Fuels Tax Fund money in excess of the permissible amount for equipment and the balance that the municipality may carry forward for the purchase of equipment to the subsequent year.

Department of Transportation *Publication 9* requires that the amount expended for equipment purchases in a given year not exceed the sum of the equipment balance carried forward from the previous year and 20 percent of the current year's Liquid Fuels Tax Fund allocation and, if applicable, 20 percent of the turnback allocation plus other Department of Transportation approved adjustments.

If the municipality spent in excess of the amount listed on Line 4, the excess must be reimbursed to the Liquid Fuels Tax Fund.

The equipment balance to be carried forward for the subsequent year is the lesser of the amount on Line 6 or the ending fund balance on Line 6 of Section 2, but not less than zero.

Background (Continued)

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 Form MS-965 has 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 Form 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 is prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Transportation. Under this method, revenues are recognized when received and expenditures are recorded when paid.

General Fixed Assets

General fixed assets are recognized as expenditures at the time of purchase. No depreciation has been provided on the heavy equipment used to maintain and repair roads and bridges.

BOROUGH OF AVONDALE CHESTER COUNTY LIQUID FUELS TAX FUND 2021 FORM MS-965 – SECTION 1 WITH ADJUSTMENTS

Expenditure Summary	Reported		Adjustments		Adjusted Amount	
Minor equipment purchases	\$	-	\$	-	\$	-
Computer/Computer related training		-		-		-
Major equipment purchases		-		-		-
Agility projects		-		-		-
Cleaning streets and gutters		-		-		-
Winter maintenance services		10,071.09		-		10,071.09
Traffic control devices		205.15		-		205.15
Street lighting		-		-		-
Storm sewers and drains		-		-		-
Repairs of tools and machinery		5,541.12		-		5,541.12
Maintenance and repair of						
roads and bridges		6,310.79		-		6,310.79
Highway construction and						
rebuilding projects		74,457.00		-		74,457.00
Miscellaneous		19,616.12		-		19,616.12
Total (To Section 2, Line 5)	\$ 1	16,201.27	\$	_	\$	116,201.27

BOROUGH OF AVONDALE CHESTER COUNTY LIQUID FUELS TAX FUND 2021 FORM MS-965 – SECTION 2 WITH ADJUSTMENTS

Fund Balance	Reported	Adjustments	Adjusted Amount
1. Balance, January 1, 2021	\$ 95,113.84	\$ -	\$ 95,113.84
Receipts: 2. State allocation	35,702.71	-	35,702.71
2a. Turnback allocation 2b. Interest on investments	- 8.65	-	- 8.65
20. Miscellaneous	19,775.00		19,775.00
3. Total receipts	55,486.36		55,486.36
4. Total funds available	150,600.20		150,600.20
5. Expenditures (Section 1)	116,201.27		116,201.27
6. Balance, December 31, 2021	\$ 34,398.93	\$ -	\$ 34,398.93

BOROUGH OF AVONDALE CHESTER COUNTY LIQUID FUELS TAX FUND 2021 FORM MS-965 – SECTION 3 WITH ADJUSTMENTS

 Reported	Adju	stments		Adjusted Amount
\$ 57,240.88	\$	-	\$	57,240.88
7,140.54		-		7,140.54
 		-		
64,381.42		-		64,381.42
 		-		
 64,381.42		-		64,381.42
\$ 34,398.93	\$	-	\$	34,398.93
\$	7,140.54 	\$ 57,240.88 \$ 7,140.54 - 64,381.42 - 64,381.42	\$ 57,240.88 \$ - 7,140.54 - 64,381.42 - <u>64,381.42 -</u> <u>64,381.42 -</u>	Reported Adjustments \$ 57,240.88 \$ - \$ 7,140.54 - - - - - - - 64,381.42 - - - 64,381.42 - - - 64,381.42 - - -

BOROUGH OF AVONDALE CHESTER COUNTY LIQUID FUELS TAX FUND 2022 FORM MS-965 – SECTION 1 WITH ADJUSTMENTS

Expenditure Summary	Reported		Adjustments		Adjusted Amount	
Minor equipment purchases	\$	-	\$	-	\$	-
Computer/Computer related training		-		-		-
Major equipment purchases		-		-		-
Agility projects		-		-		-
Cleaning streets and gutters		-		-		-
Winter maintenance services		7,032.15		-		7,032.15
Traffic control devices		1,251.86		-		1,251.86
Street lighting		-		-		-
Storm sewers and drains		-		-		-
Repairs of tools and machinery		1,243.47		-		1,243.47
Maintenance and repair of						
roads and bridges		1,241.62		-		1,241.62
Highway construction and						
rebuilding projects		-		-		-
Miscellaneous		764.21		-		764.21
Total (To Section 2, Line 5)	\$	11,533.31	\$	-	\$	11,533.31

BOROUGH OF AVONDALE CHESTER COUNTY LIQUID FUELS TAX FUND 2022 FORM MS-965 – SECTION 2 WITH ADJUSTMENTS

Fund Balance		Reported	Adjı	ustments	 Adjusted Amount
1. Balance, January 1, 2022	\$ 34,398.93		\$	-	\$ 34,398.93
Receipts:					
2. State allocation		35,578.71		-	35,578.71
2a. Turnback allocation		-		-	-
2b. Interest on investments		619.11		-	619.11
2c. Miscellaneous		402.83		-	 402.83
3. Total receipts		36,600.65			 36,600.65
4. Total funds available		70,999.58		_	 70,999.58
5. Expenditures (Section 1)		11,533.31		-	 11,533.31
6. Balance, December 31, 2022	\$	59,466.27	\$	-	\$ 59,466.27

BOROUGH OF AVONDALE CHESTER COUNTY LIQUID FUELS TAX FUND 2022 FORM MS-965 – SECTION 3 WITH ADJUSTMENTS

Equipment Balance	 Reported	Adju	stments	 Adjusted Amount
1. Prior year equipment balance	\$ 34,398.93	\$	-	\$ 34,398.93
 Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2) 	7,115.74		-	7,115.74
3. PENNDOT approved adjustments	 			
4. Total funds available for equipment acquisition	41,514.67		-	41,514.67
5. Less: Major equipment expenditures	 		_	
6. Remainder	 41,514.67		_	 41,514.67
 Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero) 	\$ 41,514.67	\$	_	\$ 41,514.67

BOROUGH OF AVONDALE CHESTER COUNTY LIQUID FUELS TAX FUND AUDITOR DESCRIPTION OF SELECT TRANSACTIONS FOR THE PERIOD JANUARY 1, 2021 TO DECEMBER 31, 2022

The following information relates to certain types of transactions for which the Pennsylvania Department of Transportation requested that we provide additional detail:

Miscellaneous Receipts

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

Source	Description	2021	2022
Financial institution General Fund	Refund of bank service fees Reimbursement for	\$ 195.00	\$402.83
	phishing scam	19,580.00	
Totals		\$19,775.00	\$402.83

Miscellaneous Expenditures

The following miscellaneous expenditures were paid from the Liquid Fuels Tax Fund during the examination period:

Payee	Description	2021	2022
Financial institution Vendor Financial institution	Bank service fees Engineering services Phishing scam	\$ 36.12 	\$676.71 87.50 -
Totals		\$19,616.12	\$764.21

Phishing Scam

On October 18, 2021, the municipality was victim of a phishing scam and had \$19,580.00 wired from its Liquid Fuels Tax Fund. On December 15, 2021, the municipality transferred \$19,580.00 from its General Fund to its Liquid Fuels Tax Fund to make up for the stolen funds.

Finding No. 1 - Nonpermissible Expenditures

Our examination disclosed that \$19,580.00 was removed via wire transfers from the borough's Liquid Fuels Tax Fund bank account during 2021 in response to a fraudulent solicitation. Because the funds were not expended for purposes permitted by the Liquid Fuels Tax Municipal Allocation Law, 72 P.S. § 2615.4, the expenditures are considered nonpermissible expenditures.

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 payments in response to fraudulent solicitations, are outside the scope of permissible expenditures.

Borough officials stated the wire transfers occurred after an individual made a phone call to the borough, fraudulently indicated he was a bank employee with the bank's fraud department, and was able to gain online access to the bank account.

Although the \$19,580.00 was reimbursed to the Liquid Fuels Tax Fund on December 15, 2021, the primary concern is the inadequate internal controls which enabled borough personnel to provide electronic access to the Liquid Fuels Tax Fund account to the fraudster. An adequate system of internal controls includes training employees to recognize and reject fraudulent solicitations. The lack of such training increases the risk of fraudulent activity occurring and remaining undetected.

Borough personnel detected the fraud one day later, which led to the successful prosecution of the perpetrator.

Recommendations

We recommend that the municipality train employees to recognize and reject fraudulent solicitations.

We further 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.

Finding No. 1 - Nonpermissible Expenditures (Continued)

Management's Response

The treasurer stated:

The fraud event took place in 2021 before the current management was in place. I was hired by the Borough in May of 2022 as Treasurer. I previously worked as a municipal treasurer for 17 years. There were never any issues of fraud.

Auditor's Conclusion

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

Finding No. 2 - Late Receipt Of Allocations

Our examination disclosed that the 2021 and 2022 Liquid Fuels Tax Fund allocations of \$35,702.71 and \$35,578.71, respectively, which should have been distributed from the Department of Transportation to the municipality during the first week of March of each year, were not received until August 5, 2021 and September 13, 2022, respectively, because the municipality failed to comply with the Department of Transportation's *Publication 9*, Chapter Two, Section 2.4, which states:

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

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

Because the municipality failed to file documents and information timely as noted above, the municipality did not have use of the 2021 allocation for five months and the 2022 allocation for more than six months. Furthermore, had the allocations been received timely, money may have been available for investment purposes, potentially earning interest income which could have been used for road maintenance and repairs.

Finding No. 2 - Late Receipt Of Allocations (Continued)

Recommendation

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

Management's Response

The treasurer stated:

I was not an employee of the borough until May 2022. The Bureau Administrator was hired one month earlier. There was no continuity between myself and the former employees. Very few records were available.

Auditor's Conclusion

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

BOROUGH OF AVONDALE CHESTER COUNTY LIQUID FUELS TAX FUND SUMMARY OF ONSITE CLOSEOUT MEETING FOR THE PERIOD JANUARY 1, 2021 TO DECEMBER 31, 2022

An onsite closeout meeting was held July 24, 2023. Those participating were:

BOROUGH OF AVONDALE

Ms. Joan McVaugh, Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Vince Gillen, Auditor

This report was initially distributed to:

The Honorable Michael Carroll

Secretary Department of Transportation

Borough of Avondale

Chester County 110 Pomeroy Avenue P. O. Box 247 Avondale, PA 19311

The Honorable Paul Morgan

President of Council

Ms. Joan McVaugh Treasurer

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