ATTESTATION ENGAGEMENT

Township of Cherry Grove

Warren County, Pennsylvania 61-202

Liquid Fuels Tax Fund
For the Period
January 1, 2018 to December 31, 2018

February 2020



Commonwealth of Pennsylvania Department of the Auditor General

Eugene A. DePasquale • Auditor General



Commonwealth of Pennsylvania
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EUGENE A. DEPASQUALE AUDITOR GENERAL

Independent Auditor's Report

Yassmin Gramian, P.E. Acting Secretary Department of Transportation Harrisburg, PA 17120

We examined the accompanying Form MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Township of Cherry Grove, Warren County, for the period January 1, 2018 to December 31, 2018. The municipality's management is responsible for presenting the Form MS-965 in accordance with the criteria set forth in Note 1. Our responsibility is to express an opinion on the Form MS-965 With Adjustments based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Form MS-965 is presented in accordance with the criteria described above, in all material respects. An examination involves performing procedures to obtain evidence about the Form 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 Form 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 mandated by Section 403 of *The Fiscal Code*, 72 P.S. § 403, to audit each municipality's Liquid Fuels Tax Fund to ensure that funds received are expended in accordance with applicable laws and regulations. *Government Auditing Standards* issued by the Comptroller General of the United States include attestation engagements as a separate type of audit. An attestation engagement performed pursuant to *Government Auditing Standards* involves additional standards that exceed the standards provided by the American Institute of Certified Public Accountants. Accordingly, this attestation engagement complies with both *Government Auditing Standards* and Section 403 of *The Fiscal Code*.

<u>Independent Auditor's Report (Continued)</u>

In our opinion, the Form MS-965 With Adjustments presents, in all material respects, the information required by the Pennsylvania Department of Transportation for the Liquid Fuels Tax Fund of the Township of Cherry Grove, Warren County, for the period January 1, 2018 to December 31, 2018, in accordance with the criteria set forth in Note 1.

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

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

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

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

• Nonpermissible Investment - Recurring.

<u>Independent Auditor's Report (Continued)</u>

The examination finding contained in this report cites a condition that existed in the operation of the municipality during the previous three engagement periods and was not corrected during the current examination period. The municipality should strive to comply with the recommendations noted in this report.

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 Township of Cherry Grove, Warren 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.

January 23, 2020

Eugene A. DePasquale Auditor General

Eugent: O-Pasper

CONTENTS

	Page
Background	1
Financial Section:	
2018 Form MS-965 With Adjustments	3
Notes To Form MS-965 With Adjustments	6
Finding And Recommendations:	
Finding - Nonpermissible Investment - Recurring	11
Summary Of Exit Conference	14
Report Distribution	15

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND BACKGROUND FOR THE PERIOD JANUARY 1, 2018 TO DECEMBER 31, 2018

Background

The Liquid Fuels Tax Municipal Allocation Law, Act 655 of 1956, as amended, (72 P.S. § 2615.5 et sec.), provides municipalities other than counties (townships, boroughs, cities, towns, home rule, and optional plan governments) with an annual allocation of liquid fuels taxes from the state's Motor License Fund to be used for the maintenance and repair of streets, roads, and bridges for which the municipality is responsible. The allocation of these funds to municipalities is based: (1) 50 percent on the municipality's proportion of local road mileage to the total local road mileage in the state, and (2) 50 percent on the proportion of a municipality's population to the total population in the state.

The Vehicle Code, Title 75 P.S. § 9511, provides municipalities with annual maintenance payments to be received from the Motor License Fund for functionally local highways that were transferred to a municipality from the Commonwealth of Pennsylvania.

Each municipality must deposit the 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.

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND BACKGROUND FOR THE PERIOD JANUARY 1, 2018 TO DECEMBER 31, 2018

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.

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND 2018 FORM MS-965 – SECTION 1 WITH ADJUSTMENTS

Expenditure Summary	Rep	oorted	Adju	stments	ljusted nount
Minor equipment purchases	\$	-	\$	_	\$ -
Computer/Computer related training		-		-	-
Major equipment purchases		-		-	-
Agility projects		-		-	-
Cleaning streets and gutters		-		-	-
Winter maintenance services		-		-	-
Traffic control devices		-		-	-
Street lighting		-		-	-
Storm sewers and drains		-		-	-
Repairs of tools and machinery		-		-	-
Maintenance and repair of					
roads and bridges		-		-	-
Highway construction and					
rebuilding projects		-		-	-
Miscellaneous				_	
Total (To Section 2, Line 5)	\$		\$	-	\$

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND 2018 FORM MS-965 – SECTION 2 WITH ADJUSTMENTS

Fund Balance	 Reported	Ad	justments	Adjusted Amount
1. Balance, January 1, 2018	\$ 247,464.29	\$	-	\$ 247,464.29
Receipts:				
2. State allocation	14,718.01		-	14,718.01
2a. Turnback allocation	-		-	-
2b. Interest on investments (Note 3)	5,131.51		-	5,131.51
2c. Miscellaneous				 _
3. Total receipts	19,849.52			 19,849.52
4. Total funds available	267,313.81			267,313.81
5. Expenditures (Section 1)				 _
6. Balance, December 31, 2018	 267,313.81	\$		\$ 267,313.81

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

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND 2018 FORM MS-965 – SECTION 3 WITH ADJUSTMENTS

\$		Adjustments		Adjusted Amount	
45,224.25	\$	-	\$	45,224.25	
2,943.60		-		2,943.60	
<u>-</u>					
48,167.85		-		48,167.85	
48,167.85				48,167.85	
\$ 48.167.85	\$	_	\$	48,167.85	
	- 48,167.85 - 48,167.85	- 48,167.85 - 48,167.85	48,167.85 - 48,167.85 -	48,167.85 - 48,167.85 -	

1. Criteria

Section 1

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

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

2014	2015/2016	2017	2018
\$10,300.00	\$10,500.00	\$10,700.00	\$10,900.00

• 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:

2014	2015/2016	2017	2018
\$10,300.00	\$10,500.00	\$10,700.00	\$10,900.00
\$10,300.00	\$10,300.00	\$10,700.00	\$10,900.00

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

Section 2

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

- The state allocation is 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.

1. <u>Criteria (Continued)</u>

Section 2 (Continued)

• Expenditures include the total transferred from Section 1.

Section 3

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

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

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

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

Basis Of Presentation

The financial activities of the municipality are accounted for in separate funds. The Liquid Fuels Tax Fund is used to account for state aid revenues from the Pennsylvania Department of Transportation used primarily for building and improving local roads and bridges. The 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.

1. <u>Criteria (Continued)</u>

Basis Of Accounting

The accompanying Form 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.

2. Deposits and Investments

The Second Class Township Code, Title 53 P.S. § 68204, authorizes the township to deposit its funds in the following:

- United States Treasury Bills
- Short-term obligations of the United States government or its agencies or instrumentalities.
- 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.
- Obligations of the United States of America or any of its agencies or instrumentalities backed by the full faith and credit of the United States of America, the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the Commonwealth of Pennsylvania, or any political subdivision of the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the political subdivision.

2. Deposits and Investments (Continued)

- Shares of an investment company registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, provided that the only investments of that company are in authorized investments for second class township funds.
- 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

Deposits consist of receipts and deposits in financial institutions. 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, 2018. 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 municipality's name.

Investments

The township is authorized to invest Liquid Fuels Tax Fund money in legal investments permitted by *The Second Class Township Code* (see above).

As of December 31, 2018, the township's Liquid Fuels Tax Fund had the following investments:

Investment	Maturity		Contract	Surrender
Type	Date	Cost	Value	Value
Annuity	06/13/2021	\$200,000.00	\$224,031.04	\$213,949.64

2. Deposits and Investments (Continued)

There were no investments exposed to custodial risk as of December 31, 2018.

The township is required to provide information about the concentration of credit risk.

As of December 31, 2018, the township held the following investments that represent 5 percent or more of the township's total Liquid Fuels Tax Fund deposits and investments. The annuity listed above was issued by Erie Family Life Insurance for \$200,000.00 and had a contract value of \$224,031.04 as of December 31, 2018. It represents 84 percent of the township's Liquid Fuels Tax Fund's total deposits and investments.

Fund Balance

The fund balance as of December 31, 2018, consists of the following:

Cash	\$ 43,282.77
Investment (Annuity)	224,031.04
Total	\$267,313.81

3. Interest On Investments

Our examination disclosed that the municipality deposited idle liquid fuels tax money in interest-bearing accounts and an annuity which earned \$5,131.51 during 2018, thus providing additional funds for road maintenance and repairs.

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND FINDING AND RECOMMENDATIONS FOR THE PERIOD JANUARY 1, 2018 TO DECEMBER 31, 2018

Finding - Nonpermissible Investment - Recurring

We cited the municipality for nonpermissible investments in our three prior reports with the most recent being January 1, 2017 to December 31, 2017. Our current examination disclosed that the municipality deposited \$200,000.00 of Liquid Fuels Tax Fund money into a single premium deferred non-qualified annuity on June 12, 2014. The municipality earned interest on the annuity of \$3,844.21 during 2014, \$5,720.56 during 2015, \$4,715.20 during 2016, \$4,821.29 during 2017 and \$4,929.78 during 2018, which increased the contract balance to \$224,031.04 as of December 31, 2018. However, *The Second Class Township Code* does not permit municipalities to invest in annuities.

The Second Class Township Code, Title 53 P.S. § 68204, authorizes the township to deposit and invest its funds in the following:

- United States Treasury Bills.
- Short-term obligations of the United States government or its agencies or instrumentalities.
- 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.
- Obligations of the United States of America or any of its agencies or instrumentalities backed by the full faith and credit of the United States of America, the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the Commonwealth of Pennsylvania, or any political subdivision of the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the political subdivision.
- Shares of an investment company registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, provided that the only investments of that company are in authorized investments for second class township funds.

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND FINDING AND RECOMMENDATIONS FOR THE PERIOD JANUARY 1, 2018 TO DECEMBER 31, 2018

<u>Finding - Nonpermissible Investment - Recurring (Continued)</u>

• Certificates of deposit purchased from institutions insured by the FDIC or other like insurance to the extent that the 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.

Permissible investments do not include annuities.

In this instance, the single-premium deferred non-qualified annuity is not insured by the FDIC or other entity, but is backed by the financial strength of Erie Family Life, as well as its parent company Erie Insurance Group. Should those companies become insolvent, the Pennsylvania Life & Health Insurance Guaranty Association (PLHIGA) currently provides coverage up to only \$100,000.00 for deferred annuities after an issuing insurance company becomes insolvent. As such, the investment could be at risk should Erie Family Life or its parent company go out of business or file for bankruptcy. The PLHIGA is not a commonwealth agency or entity, but rather a statutorily created association of insurance companies doing business in Pennsylvania.

Additionally, while Cherry Grove Township is listed as the beneficiary and owner for the annuity, the Chairman of the Board of Supervisors is listed as the annuitant. As such, the Liquid Fuels Tax Fund money has been effectively transferred to an individual who can use the funds for his benefit.

This finding occurred because the municipality did not comply with our prior examination recommendation that the municipality follow with *The Second Class Township Code* for permissible investments.

Recommendations

We again recommend that the Department of Transportation determine whether or not Cherry Grove Township should liquidate its investment in the annuity.

We further again recommend that the municipality ensure that the Chairman of the Board of Supervisors name is immediately removed as the annuitant for this investment.

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND FINDING AND RECOMMENDATIONS FOR THE PERIOD JANUARY 1, 2018 TO DECEMBER 31, 2018

<u>Finding - Nonpermissible Investment - Recurring (Continued)</u>

Management's Response

The secretary/treasurer stated:

The annuity was taken out prior to my starting here as secretary/treasurer. I have spoken with our PENNDOT rep and he advised to leave it until maturity date and then at that time, move it to another interest bearing account.

Auditor's Conclusion

The Department of Transportation will determine if the municipality should maintain the investment to maturity or liquidate the investment. During our next examination, we will determine if the municipality complied with our recommendations.

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND SUMMARY OF EXIT CONFERENCE FOR THE PERIOD JANUARY 1, 2018 TO DECEMBER 31, 2018

An exit conference was held September 10, 2019. Those participating were:

TOWNSHIP OF CHERRY GROVE

Mrs. Carleena D. McMillen, Secretary/Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Mr. R.J. Zonna, Auditor

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

TOWNSHIP OF CHERRY GROVE WARREN COUNTY LIQUID FUELS TAX FUND REPORT DISTRIBUTION FOR THE PERIOD JANUARY 1, 2018 TO DECEMBER 31, 2018

This report was initially distributed to:

Yassmin Gramian, P.E.

Acting Secretary
Department of Transportation

Township of Cherry Grove

Warren County 6039 Cherry Grove Road Clarendon, PA 16313

The Honorable Henry B. Geer

Chairman of the Board of Supervisors

Mrs. Carleena D. McMillen

Secretary/Treasurer

This report is a matter of public record and is available online at 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.