

ATTESTATION ENGAGEMENT

Borough of Darby
Delaware County, Pennsylvania
23-407
Liquid Fuels Tax Fund
For the Period
January 1, 2016 to December 31, 2016

May 2018



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 Form MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Borough of Darby, Delaware County, for the period January 1, 2016 to December 31, 2016. 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 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*.

As described in Note 4, the adjustments included on the Form MS-965 With Adjustments are made by the Department of the Auditor General.

Independent Auditor's Report (Continued)

As discussed in the Findings And Recommendations and Summary Of Examinations' Recommendations sections of this report:

- The municipality transferred \$382,463.23 of Liquid Fuels Tax Fund money into the General Fund on January 26, 2016, which is in noncompliance with the Liquid Fuels Tax Municipal Allocation Law (see Finding No. 1).
- The municipality expended \$1,057.00 during 2016 from the Liquid Fuels Tax Fund for mowing lawns and power washing, which are nonpermissible expenditures (see Finding No. 2).
- In our 2014-2015 report we recommended that the Department of Transportation review our examination findings to determine if the municipality should reimburse \$23,044.00 to its Liquid Fuels Tax Fund. As of the exit conference date of this report of January 26, 2018, this amount had not been reimbursed to the Liquid Fuels Tax Fund (Summary of 2014-2015 Examination Recommendations).

In our opinion, except for the bulleted matters discussed above, 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 Borough of Darby, Delaware County, for the period January 1, 2016 to December 31, 2016, 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 the 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.

Independent Auditor's Report (Continued)

Our consideration of the internal control 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 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. 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 Borough of Darby, Delaware 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 instances of noncompliance that are required to be reported under *Government Auditing Standards*.

- Liquid Fuels Money Transferred To The General Fund - Recurring.
- Nonpermissible Expenditure.

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:

- Idle Funds Held In A Noninterest Bearing Account - Recurring.
- Late Receipt Of Allocation - Recurring.

The examination first, third, and fourth examination findings contained in this report cite conditions that existed in the operation of the municipality during the previous engagement period and were not corrected during the current examination period. The municipality should strive to comply with the recommendations and corrective actions 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.

Independent Auditor's Report (Continued)

We appreciate the courtesy extended by the Borough of Darby, Delaware 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.

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

March 21, 2018

Eugene A. DePasquale
Auditor General

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BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Background

The Liquid Fuels Tax Municipal Allocation Law, Act 655 of 1956, as amended, (72 P.S. § 2615.5 et seq.), 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.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

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.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
2016 FORM MS-965 – SECTION 1
WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
Major equipment purchases	\$ -	\$ -	\$ -
Minor equipment purchases	1,218.53	(1,218.53)	-
Computer/Computer related training	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	14,225.74	-	14,225.74
Traffic control devices	-	1,218.53	1,218.53
Street lighting	58,472.21	-	58,472.21
Storm sewers and drains	10,452.00	-	10,452.00
Repairs of tools and machinery	9,752.70	-	9,752.70
Maintenance and repair of roads and bridges	269.80	-	269.80
Highway construction and rebuilding projects	67,999.06	-	67,999.06
Miscellaneous (Finding No. 1)	382,463.23	-	382,463.23
 Total (To Section 2, Line 5)	 <u>\$ 544,853.27</u>	 <u>\$ -</u>	 <u>\$ 544,853.27</u>

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

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 2016 FORM MS-965 – SECTION 2
 WITH ADJUSTMENTS

<u>Fund Balance</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
1. Balance, January 1, 2016	\$ 440,419.39	\$ (7,345.42)	\$ 433,073.97
Receipts:			
2. State allocation	223,261.04	-	223,261.04
2a. Turnback allocation	-	-	-
2b. Interest on investments (Note 3)	-	-	-
2c. Miscellaneous (Summary Of 2012- 2013 Examination Recommendation)	-	87,530.39	87,530.39
3. Total receipts	<u>223,261.04</u>	<u>87,530.39</u>	<u>310,791.43</u>
4. Total funds available	<u>663,680.43</u>	<u>80,184.97</u>	<u>743,865.40</u>
5. Expenditures (Section 1)	<u>544,853.27</u>	<u>-</u>	<u>544,853.27</u>
6. Balance, December 31, 2016	<u>\$ 118,827.16</u>	<u>\$ 80,184.97</u>	<u>\$ 199,012.13</u>

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

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
2016 FORM MS-965 – SECTION 3
WITH ADJUSTMENTS

<u>Equipment Balance</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
1. Prior year equipment balance	\$ 159,840.27	\$ 8,679.00	\$ 168,519.27
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	44,652.21	-	44,652.21
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	204,492.48	8,679.00	213,171.48
5. Less: Major equipment expenditures	-	-	-
6. Remainder	<u>204,492.48</u>	<u>8,679.00</u>	<u>213,171.48</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 118,827.16</u>	<u>\$ 80,184.97</u>	<u>\$ 199,012.13</u>

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

BOROUGH OF DARBY
 DELAWARE COUNTY
 LIQUID FUELS TAX FUND
 NOTES TO FORM MS-965 WITH ADJUSTMENTS
 FOR THE PERIOD
 JANUARY 1, 2016 TO DECEMBER 31, 2016

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:

2013	2014	2015/2016	2017
\$10,200.00	\$10,300.00	\$10,500.00	\$10,700.00

- 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:

2013	2014	2015/2016	2017
\$10,200.00	\$10,300.00	\$10,500.00	\$10,700.00

- 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.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORM MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

1. Criteria (Continued)

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.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORM MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

1. Criteria (Continued)

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

The Borough Code, Title 53 P.S. § 46316, authorizes the borough 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 loans 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.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORM MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2016 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 municipality's name.

Fund Balance

The fund balance as of December 31, 2016, consists of the following:

Cash	<u>\$199,012.13</u>
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3. Interest On Investments

Our examination disclosed that the municipality deposit idle liquid fuels tax money in a noninterest-bearing account (see Finding No. 3).

4. Adjustments

Section 1

Adjustments were made to "Minor equipment purchases" and "Traffic control devices" because expenditures of \$1,218.53 were misclassified.

Section 2

An adjustment of \$(7,345.42) was made to "Balance, January 1, 2016" because of a prior report adjustment that was not carried forward in the fund balance.

An adjustment of \$87,530.39 was made to "Miscellaneous" because these receipts were not reported

Section 3

An adjustment of \$8,679.00 was made to "Prior year equipment balance" because an incorrect equipment balance was carried forward.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Finding No. 1 - Liquid Fuels Money Transferred To The General Fund - Recurring

We cited the municipality for transferring Liquid Fuels Tax Fund money into the General Fund in our prior examination report for the period January 1, 2014 to December 31, 2015. Our current examination disclosed that the municipality transferred \$382,463.23 of Liquid Fuels Tax Fund money into the General Fund on January 26, 2016, which is in noncompliance with the Liquid Fuels Tax Municipal Allocation Law.

The practice of transferring liquid fuels money into any account other than the Liquid Fuels Tax Fund account is contrary to the Act of June 1, 1956, P.L. (1955) 1944, 72 P.S. § 2615.5, known as the Liquid Fuels Tax Municipal Allocation Law, which states:

. . . each city, borough, town and township, shall . . . Establish and maintain a special fund into which the moneys [liquid fuels tax funds] . . . shall be deposited and into which no other moneys may be deposited or commingled . . .

The risk that Liquid Fuels Tax Fund money may be used for unauthorized purposes increases when liquid fuels money is commingled with other funds.

The failure to follow the Liquid Fuels Tax Municipal Allocation Law as noted above could result in the municipality having to reimburse \$382,463.23 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the municipality reimburse \$382,463.23 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We again recommend that, in the future, the municipality maintain all liquid fuels tax money in the Liquid Fuels Tax Fund.

Management's Response

The borough manager stated:

In the process of completing the transfer. Already \$186,000.00 has been put into an interest bearing liquid fuels bank account. This will be fully completed shortly.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Finding No. 1 - Liquid Fuels Money Transferred To The General Fund - Recurring
(Continued)

Auditor's Conclusion

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

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Finding No. 2 - Nonpermissible Expenditure

Our examination disclosed that the municipality expended \$1,057.00 during 2016 from the Liquid Fuels Tax Fund for mowing lawns and power washing, which are 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 mowing lawns and power washing, are outside the scope of permissible expenditures.

The failure to follow the Liquid Fuels Tax Municipal Allocation Law and the Department of Transportation's Regulations as noted above could result in the municipality having to reimburse \$1,057.00 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the municipality reimburse \$1,057.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

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

Management's Response

The borough manager stated:

Noted.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Finding No. 2 - Nonpermissible Expenditure (Continued)

Auditor's Conclusion

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

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Finding No. 3 - Idle Funds Held In A Noninterest-Bearing Account - Recurring

We cited the municipality for maintaining idle funds in a noninterest-bearing account in our prior two reports with the most recent being for the period January 1, 2014 to December 31, 2015. Our current examination disclosed that liquid fuels tax money in excess of current needs was deposited in a noninterest-bearing checking account from January 1, 2016 to December 31, 2016 with an average balance of \$36,355.26.

The Department of Transportation's *Publication 9*, Chapter Two, Section 2.6.1, states:

All monies in the Liquid Fuels Tax Fund account should be invested to earn interest until expended.

The Borough Code, Section 1316, as published by the Local Government Commission, lists the types of permissible investments for borough funds. If the borough had invested the liquid fuels tax funds in interest-bearing accounts, certificates of deposit, or other investments permitted by *The Borough Code*, additional money would have been earned for road maintenance and repairs.

Recommendation

We again recommend that the township officials comply with the Department of Transportation's *Publication 9* by reassessing their fiscal policy and consider investing money in excess of current needs in investments outlined in *The Borough Code* as published by the Local Government Commission.

Management's Response

The borough manager stated:

Already \$186,000.00 has been put into an interest-bearing liquid fuels bank account.

Auditor's Conclusion

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

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Finding No. 4 - Late Receipt Of Allocation - Recurring

We cited the municipality for receiving its Liquid Fuels Tax Fund allocation late in our prior two reports with the most recent being for the period January 1, 2014 to December 31, 2015. Our current examination disclosed that the 2016 Liquid Fuels Tax Fund allocation of \$223,261.04, which should have been distributed from the Department of Transportation to the municipality during the first week of March of that year, was not received until December 21, 2016, 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.

Because the municipality failed to file documents and information timely as noted above, the municipality did not have use of the 2016 allocation for more than nine months. Furthermore, had the allocation 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.

Recommendation

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

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Finding No. 4 - Late Receipt Of Allocation - Recurring (Continued)

Management's Response

The municipal officials stated:

Noted.

Auditor's Conclusion

This is a recurring finding. We strongly recommend that the municipality comply with our recommendation. During our next examination we will determine if the municipality complied with our recommendation.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF PRIOR EXAMINATIONS' RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Summary Of 2012 - 2013 Recommendations

In our 2012-2013 report the municipality transferred \$300,130.39 from its Liquid Fuels Tax Fund to other funds in excess of permissible Liquid Fuels Tax Fund expenditures. We further noted that the municipality reimbursed \$216,000.00 to its Liquid Fuels Tax Fund on October 14, 2014, leaving \$84,130.39 due the Liquid Fuels Tax Fund. Additionally, the municipality expended \$3,400.00 from its Liquid Fuels Tax Fund for retroactive expenditures. We recommended that the Department of Transportation review our examination findings to determine if the municipality should reimburse \$87,530.39 to its Liquid Fuels Tax Fund.

During our 2014-2015 examination we reviewed a letter dated April 29, 2015, from the Department of Transportation informing the municipality to reimburse \$87,530.39 to its Liquid Fuels Tax Fund. We noted that the municipality reimbursed \$84,130.39 to its Liquid Fuels Tax Fund on August 4, 2016, and the remaining balance of \$3,400.00 on November 30, 2016.

Summary Of 2014-2015 Examination Recommendations

In our prior report we recommended that the Department of Transportation review our examination findings to determine if the municipality should reimburse \$23,044.00 to its Liquid Fuels Tax Fund. This amount consists of \$15,044.00 for liquid fuels money over expended on a project and \$8,000.00 for liquid fuels money transferred to the General Fund.

During our current examination we reviewed a letter dated August 22, 2017, from the Department of Transportation informing the municipality to reimburse \$23,044.00 to its Liquid Fuels Tax Fund. As of the exit conference date of this report of January 26, 2018, this amount had not been reimbursed to the Liquid Fuels Tax Fund.

In our 2014-2015 report we also recommended that:

- The municipality expend only the approved amount of Liquid Fuels Tax Money on road construction projects.
- The municipality deposit all liquid fuels tax money promptly into the Liquid Fuels Tax Fund.
- Borough officials reassess their fiscal policy and consider and investing their money in excess of current needs in investments as outlined in Section 1326 of *The Borough Code*, as published by the Local Government Commission.

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF PRIOR AUDIT RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

Summary Of 2014-2015 Examination Recommendations (Continued)

- The municipality complies with the Department of Transportation's *Publication 9* to ensure that the allocations are received during the first week of March.

During our current examination we noted that the municipality complied with our first bulleted recommendation. However, the municipality did not comply with the second, third, and fourth bulleted recommendations (see Finding Nos. 1, 3, and 4).

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF EXIT CONFERENCE
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

An exit conference was held January 26, 2018. Those participating were:

BOROUGH OF DARBY

Mr. Mark Possenti, Borough Manager

DEPARTMENT OF THE AUDITOR GENERAL

Mr. John C. Socket, Auditor

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

BOROUGH OF DARBY
DELAWARE COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

This report was initially distributed to:

The Honorable Leslie Richards
Secretary
Department of Transportation

Borough of Darby
Delaware County
1020 Ridge Avenue
Darby, PA 19023

The Honorable Darlene Hill
President of Council

Mr. Mark Possenti
Borough Manager

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.