

# ATTESTATION ENGAGEMENT

---

Township of Foster  
Luzerne County, Pennsylvania  
40-212  
Liquid Fuels Tax Fund  
For the Period  
January 1, 2021 to December 31, 2021

---

September 2022



Commonwealth of Pennsylvania  
Department of the Auditor General

Timothy L. DeFoor • Auditor General



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 Yassmin Gramian, P.E.  
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 Foster, Luzerne County, for the period January 1, 2021 to December 31, 2021. The municipality's management is responsible for presenting the Form 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 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.

As described in the Auditor Description Of Select Transactions section of this report, the adjustments included on the Form MS-965 With Adjustments are made by the Department of the Auditor General.

As discussed in Finding No. 1, the township expended \$31,425.00 from its Liquid Fuels Tax Fund for the purchase of a Mack dump truck without advertising for bids. Additionally, as discussed in Finding No. 2, the township expended \$20,990.00 for the purchase of a New Holland grader without maintaining documentation for price quotations.

## Independent Auditor's Report (Continued)

In our opinion, except for the matters discussed in the preceding paragraph, 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 Foster, Luzerne County, for the period January 1, 2021 to December 31, 2021, 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 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.

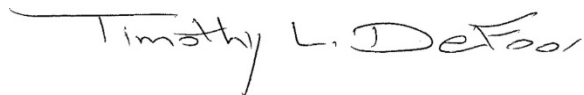
Independent Auditor's Report (Continued)

As part of obtaining reasonable assurance about whether the Form MS-965 is free from material misstatement, we performed tests of the Township of Foster, 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 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*:

- Noncompliance With Advertising And Bidding Requirements.
- Documentation For Price Quotations Was Not Available For Examination.

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 Foster, Luzerne 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. DeFoor  
Auditor General  
September 8, 2022

# CONTENTS

	<u>Page</u>
Background.....	1
Financial Section:	
2021 Form MS-965 With Adjustments .....	5
Auditor Description Of Select Transactions.....	8
Findings And Recommendations:	
Finding No. 1 - Noncompliance With Advertising And Bidding Requirements .....	9
Finding No. 2 - Documentation For Price Quotations Was Not Available For Examination .....	11
Summary Of Exit Conference.....	13
Report Distribution .....	14

TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
BACKGROUND  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

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 these funds to municipalities is based upon: (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.

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.

TOWNSHIP OF FOSTER  
 LUZERNE COUNTY  
 LIQUID FUELS TAX FUND  
 BACKGROUND  
 FOR THE PERIOD  
 JANUARY 1, 2021 TO DECEMBER 31, 2021

Background (Continued)

3. Submit the Pennsylvania Department of Community and Economic Development’s (DCED) Report of Elected and Appointed Officials by January 31<sup>st</sup> and the Survey of Financial Condition By March 15<sup>th</sup>.
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:

2018	2019	2020	2021
\$10,900.00	\$11,100.00	\$11,300.00	\$11,500.00

- 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:

2018	2019	2020	2021
\$10,900.00	\$11,100.00	\$11,300.00	\$11,500.00

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

TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
BACKGROUND  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

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.



TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
BACKGROUND  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

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 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.

TOWNSHIP OF FOSTER  
 LUZERNE COUNTY  
 LIQUID FUELS TAX FUND  
 2021 FORM MS-965 – SECTION 1  
 WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Minor equipment purchases	\$ -	\$ -	\$ -
Computer/Computer related training	-	-	-
Major equipment purchases	53,015.00	-	53,015.00
Agility projects	-	-	-
Cleaning streets and gutters	5,900.00	-	5,900.00
Winter maintenance services	37,600.52	-	37,600.52
Traffic control devices	2,369.53	(1,074.00)	1,295.53
Street lighting	-	-	-
Storm sewers and drains	5,348.13	1,074.00	6,422.13
Repairs of tools and machinery	59,009.57	(2,908.00)	56,101.57
Maintenance and repair of roads and bridges	20,866.14	2,908.00	23,774.14
Highway construction and rebuilding projects	12,271.39	-	12,271.39
Miscellaneous	25.00	-	25.00
 Total (To Section 2, Line 5)	 <u>\$ 196,405.28</u>	 <u>\$ -</u>	 <u>\$ 196,405.28</u>

TOWNSHIP OF FOSTER  
 LUZERNE COUNTY  
 LIQUID FUELS TAX FUND  
 2021 FORM MS-965 – SECTION 2  
 WITH ADJUSTMENTS

<u>Fund Balance</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
1. Balance, January 1, 2021	\$ 172,032.32	\$ -	\$ 172,032.32
Receipts:			
2. State allocation	147,560.53	-	147,560.53
2a. Turnback allocation	-	-	-
2b. Interest on investments	49.19	-	49.19
2c. Miscellaneous	-	-	-
3. Total receipts	<u>147,609.72</u>	<u>-</u>	<u>147,609.72</u>
4. Total funds available	<u>319,642.04</u>	<u>-</u>	<u>319,642.04</u>
5. Expenditures (Section 1)	<u>196,405.28</u>	<u>-</u>	<u>196,405.28</u>
6. Balance, December 31, 2021	<u><u>\$ 123,236.76</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 123,236.76</u></u>

TOWNSHIP OF FOSTER  
 LUZERNE COUNTY  
 LIQUID FUELS TAX FUND  
 2021 FORM MS-965 – SECTION 3  
 WITH ADJUSTMENTS

<u>Equipment Balance</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
1. Prior year equipment balance	\$ 107,311.81	\$ -	\$ 107,311.81
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	29,512.11	-	29,512.11
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	136,823.92	-	136,823.92
5. Less: Major equipment expenditures	53,015.00	-	53,015.00
6. Remainder	<u>83,808.92</u>	<u>-</u>	<u>83,808.92</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 83,808.92</u>	<u>\$ -</u>	<u>\$ 83,808.92</u>

TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
AUDITOR DESCRIPTION OF SELECT TRANSACTIONS  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

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

Adjustments

Section 1

Adjustments were made to “Traffic control devices” and “Storm sewers and drains” because expenditures of \$1,074.00 were misclassified.

Adjustments were made to “Repairs of tools and machinery” and “Maintenance and repair of roads and bridges” because expenditures of \$2,908.00 were misclassified.

Miscellaneous Expenditures

On September 30, 2021, the municipality’s Liquid Fuels Tax Fund incurred a bank service charge of \$25.00.

Lease-Purchase Agreement

On September 15, 2020, the municipality entered into a lease-purchase agreement with Municipal Capital Finance to purchase a Chevrolet dump truck for \$89,498.28. The agreement was for a term of five years at an interest rate of 5.5 percent. Principal and interest payments of \$2,317.88 are due quarterly. Prior years’ principal and interest payments from the Liquid Fuels Tax Fund were \$51,695.39 and \$622.49, respectively.

During the current examination period, the municipality paid principal of \$7,052.99 and interest of \$2,218.53 from the General Fund. The outstanding balance of the lease-purchase agreement as of December 31, 2021, was \$30,749.90, plus interest.

TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

**Finding No. 1 - Noncompliance With Advertising And Bidding Requirements**

Our examination disclosed that the township expended \$31,425.00 on September 30, 2021, from the Liquid Fuels Tax Fund for the purchase of a 2009 Mack granite dump truck without advertising for bids.

The above expenditure was not made in compliance with the advertising, bidding, and contract requirements of *The Second Class Township Code*, 53 P.S. § 68102(a), (also found at § 3102(a) of *The Second Class Township Code* as published by the Local Government Commission), which requires that purchases over \$18,500.00 during 2012 must be advertised, bid, and awarded by contract. The bidding threshold increased to purchases over \$21,300.00 for 2021 and \$21,900.00 for 2022. *The Second Class Township Code*, 53 P.S. § 68104(a), (also found at § 3104(a) of *The Second Class Township Code* as published by the Local Government Commission) further states that advertising, bidding and contract requirements should not be evaded through piecemeal purchases.

This occurred because the municipality thought comparing vehicles for sale on an auction website was the same as obtaining bids.

The failure to comply with *The Second Class Township Code* could result in the township having to reimburse \$31,425.00 to its Liquid Fuels Tax Fund.

**Recommendations**

We recommend that the township reimburse \$31,425.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the township complies with *The Second Class Township Code* as noted in this finding.

**Management's Response**

The municipal officials stated:

We had two members of the road crew and two other professionals look at a total of four trucks at an auction site prior to going out to bid. After review, the township felt that two of the trucks were worthy of bids while the other two were more expensive.

TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

**Finding No. 1 - Noncompliance With Advertising And Bidding Requirements (Continued)**

Auditor's Conclusion

*The Second Class Township Code* required that purchases over \$21,300.00 during 2021 be advertised, bid, and awarded by contract. Tracking prices on an auction site does not meet the requirements of *The Second Class Township Code*. During our next examination, we will determine if the municipality complied with our recommendations.

TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

**Finding No. 2 - Documentation For Price Quotations Was Not Available For Examination**

Our examination disclosed that the township expended \$20,990.00 on May 4, 2021, from the Liquid Fuels Tax Fund for the purchase of a 2002 New Holland grader. The township was required to obtain three written or telephonic price quotations for this expenditure. However, documentation for price quotations was not available for examination.

The above expenditure was not made in compliance with the contract requirements of *The Second Class Township Code*, 53 P.S. § 68102(b), (also found at § 3102(b) of *The Second Class Township Code* as published by the Local Government Commission), which states, in part:

Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for all contracts [during 2012] that exceed ten thousand dollars (\$10,000.00) but are less than the amount [in excess of \$18,500.00] requiring advertisement and competitive bidding or, in lieu of price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of telephonic price quotations shall be made and shall contain at least the date of the quotation, the name of the contractor and the contractor's representative, the construction, reconstruction, repair, maintenance, or work which was the subject of the quotation and the price. Written price quotations, written records of telephonic price quotations, and memoranda shall be retained for a period of three years.

The thresholds for obtaining price quotations increased to purchases between \$11,500.00 and \$21,300.00 for 2021, and \$11,800.00 and \$21,900.00 for 2022.

This occurred because the municipality thought tracking three graders on an auction site would be sufficient to comply with obtaining three telephonic or written price quotations.



TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

**Finding No. 2 - Documentation For Price Quotations Was Not Available For Examination  
(Continued)**

The failure to comply with *The Second Class Township Code* could result in the township having to reimburse \$20,990.00 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the township reimburse \$20,990.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the township complies with *The Second Class Township Code* as noted in this finding.

Management's Response

The municipal officials stated:

Comparable equipment documents were supplied at departure.

Auditor's Conclusion

*The Second Class Township Code* required that the township obtain three written or telephonic price quotations for purchases between \$11,500.00 and \$21,300.00 during 2021. Tracking prices on an auction site does not meet the requirements of *The Second Class Township Code*. During our next examination, we will determine if the municipality complied with our recommendations.

TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
SUMMARY OF EXIT CONFERENCE  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

An exit conference was held May 25, 2022. Those participating were:

TOWNSHIP OF FOSTER

Ms. Brittany M. Majewski, Municipal Secretary

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Corey Tomasetti, Auditor

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

TOWNSHIP OF FOSTER  
LUZERNE COUNTY  
LIQUID FUELS TAX FUND  
REPORT DISTRIBUTION  
FOR THE PERIOD  
JANUARY 1, 2021 TO DECEMBER 31, 2021

This report was initially distributed to:

**The Honorable Yassmin Gramian, P.E.**  
Secretary  
Department of Transportation

**Township of Foster**  
Luzerne County  
1000 Wyoming Avenue  
Freeland, PA 18224

**The Honorable Wilson Malloy**  
Chairperson of the Board of Supervisors

**The Honorable Georgiann Eckrote-Jones**  
Supervisor/Secretary/Treasurer

**Ms. Brittany M. Majewski**  
Municipal Secretary

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).