

ATTESTATION ENGAGEMENT

Township of Le Boeuf

Erie County, Pennsylvania

25-211

Liquid Fuels Tax Fund

For the Period

January 1, 2019 to December 31, 2019

September 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 Le Boeuf, Erie County, for the period January 1, 2019 to December 31, 2019. 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.

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*.

Independent Auditor's Report (Continued)

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.

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 Le Boeuf, Erie County, for the period January 1, 2019 to December 31, 2019, 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 Le Boeuf, Erie 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 no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*. However, we did note a matter that, while not required to be included in this report by *Government Auditing Standards*, has been included in the finding below:

- Related Party Transactions.

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 Le Boeuf, Erie 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.



Eugene A. DePasquale
Auditor General

September 2, 2020

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TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2019 TO DECEMBER 31, 2019

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.

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2019 TO DECEMBER 31, 2019

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:

<u>2015/2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
<u>\$10,500.00</u>	<u>\$10,700.00</u>	<u>\$10,900.00</u>	<u>\$11,100.00</u>

- 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:

<u>2015/2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
<u>\$10,500.00</u>	<u>\$10,700.00</u>	<u>\$10,900.00</u>	<u>\$11,100.00</u>

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

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2019 TO DECEMBER 31, 2019

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 LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2019 TO DECEMBER 31, 2019

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 LE BOEUF
 ERIE COUNTY
 LIQUID FUELS TAX FUND
 2019 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	60,500.00	-	60,500.00
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	19,850.89	-	19,850.89
Traffic control devices	2,189.04	-	2,189.04
Street lighting	-	-	-
Storm sewers and drains	-	5,579.00	5,579.00
Repairs of tools and machinery	46,178.06	-	46,178.06
Maintenance and repair of roads and bridges	115,307.72	(1,216.37)	114,091.35
Highway construction and rebuilding projects	-	-	-
Miscellaneous	<u>4,387.63</u>	<u>(4,362.63)</u>	<u>25.00</u>
Total (To Section 2, Line 5)	<u>\$ 248,413.34</u>	<u>\$ -</u>	<u>\$ 248,413.34</u>

TOWNSHIP OF LE BOEUF
 ERIE COUNTY
 LIQUID FUELS TAX FUND
 2019 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, 2019	\$ 44,140.99	\$ -	\$ 44,140.99
Receipts:			
2. State allocation	156,308.95	-	156,308.95
2a. Turnback allocation	37,960.00	-	37,960.00
2b. Interest on investments	732.24	-	732.24
2c. Miscellaneous	11,354.95	-	11,354.95
3. Total receipts	206,356.14	-	206,356.14
4. Total funds available	250,497.13	-	250,497.13
5. Expenditures (Section 1)	248,413.34	-	248,413.34
6. Balance, December 31, 2019	<u>\$ 2,083.79</u>	<u>\$ -</u>	<u>\$ 2,083.79</u>

TOWNSHIP OF LE BOEUF
 ERIE COUNTY
 LIQUID FUELS TAX FUND
 2019 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	\$ 44,140.99	\$ -	\$ 44,140.99
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	38,853.79	-	38,853.79
3. PENNDOT approved adjustments	<u>10,200.00</u>	<u>-</u>	<u>10,200.00</u>
4. Total funds available for equipment acquisition	93,194.78	-	93,194.78
5. Less: Major equipment expenditures	<u>60,500.00</u>	<u>-</u>	<u>60,500.00</u>
6. Remainder	<u>32,694.78</u>	<u>-</u>	<u>32,694.78</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 2,083.79</u>	<u>\$ -</u>	<u>\$ 2,083.79</u>

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
AUDITOR DESCRIPTION OF SELECT TRANSACTIONS
FOR THE PERIOD
JANUARY 1, 2019 TO DECEMBER 31, 2019

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 “Maintenance and repair of roads and bridges,” “Storm sewers and drains,” and “Miscellaneous” because expenditures of \$5,579.00 were misclassified.

Miscellaneous Receipts

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

<u>Source</u>	<u>Description</u>	<u>Amount</u>
Union Township	Turnback agreement	\$ 680.00
Municipal	Sale of truck	5,000.00
Vendor	Refund of overpayment	474.95
Resident	Sale of truck	5,200.00
Total		<u>\$11,354.95</u>

Miscellaneous Expenditures

On, July 18, 2019, the municipality expended \$25.00 from the Liquid Fuels Tax Fund for a bank service charge.

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
AUDITOR DESCRIPTION OF SELECT TRANSACTIONS
FOR THE PERIOD
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Lease-Purchase Agreement

On October 24, 2014, the municipality entered into a lease-purchase agreement with John Deere Financial to purchase a 2014 John Deere 710K loader/backhoe for \$126,668.00. The agreement was for a term of five years at an interest rate of 2.0 percent. Principal and interest payments of \$26,843.14 are due annually. Prior years' principal and interest payments from the Liquid Fuels Tax Fund were \$24,501.45 and \$2,341.69, respectively. Additionally, the municipality paid principal of \$75,853.55 and interest of \$4,675.87 from the General Fund.

During the current examination period, the municipality paid principal of \$26,313.00 and interest of \$530.14 from the General Fund. The lease-purchase agreement was paid-in-full as of September 24, 2019.

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2019 TO DECEMBER 31, 2019

Finding - Related Party Transactions

Our examination disclosed that the township expended \$6,627.10 during 2019 from the Liquid Fuels Tax Fund for trucking and hauling charges. The Chairman of the Board is father-in-law to the owner of the trucking company that was hired on several occasions during 2019 to haul gravel utilized by the township for use on its roads. Due to the chairman's father-in-law's financial interest in the company, and the lack of an open and public award process, these contracts appear to violate *The Second Class Township Code* and The Public Official and Employee Ethics Act. Therefore, they should not have been entered into by the township.

The Second Class Township Code, 53 P.S. § 68102(i), as amended, states, in part:

No township official, either elected or appointed, or township employee who knows, or who by the exercise of reasonable diligence could know, shall be interested to any appreciable degree, either directly or indirectly, in any contract for the sale or furnishing of any supplies or materials for the use of the township or for any work to be done for such township involving the expenditure by the township of more than five hundred dollars (\$500.00) in any year unless the contract is awarded through the public bid process. This limitation does not apply if the officer or appointee of the township is an employee of the person, firm or corporations to which the money is to be paid in a capacity with no possible influence on the transaction and the officer cannot possibly be benefited thereby, either financially or otherwise. If a supervisor is within this exception, the supervisor shall so inform the board of supervisors and refrain from voting on the payments and shall in no manner participate in the contract. . . .

This information is also published in § 3102(i) of *The Second Class Township Code* as published by the Local Government Commission.

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2019 TO DECEMBER 31, 2019

Finding - Related Party Transactions (Continued)

The Public Official and Employee Ethics Act (“Ethics Act”), 65 P.S. 1103(f), states, in part:

No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract.

Because these contracts violate *The Second Class Township Code* and the Ethics Act, the township could be required by the Pennsylvania Department of Transportation to reimburse \$6,627.10 to its Liquid Fuels Tax Fund.

Copies of this finding will be forwarded to the Pennsylvania Department of Transportation and the State Ethics Commission for their review and whatever action they may deem appropriate.

Recommendations

We recommend that the township reimburse \$6,627.10 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* and the Ethics Act.

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
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Finding - Related Party Transactions (Continued)

Management's Response

The township officials stated:

Supervisor/Chairman has no vested interest in the vendor. The trucking expense was approved by two supervisors. The chairman tries not to sign any checks in regards to the trucking company, and if he does, the checks are always signed by two other signers. The amount was under the \$11,100.00 amount. Supervisors used this trucking company as well as others to haul millings and limestone. Check No. 4349, for the amount of \$280.00, should not be included. This was for the placement of stickers on equipment, which is a minor equipment purchase, and falls under the \$500.00 amount. The total finding amount should only be \$6,347.10.

Auditor's Conclusion

The reference of the check amount being under \$11,100.00 was the threshold for obtaining price quotations during 2019 for purchases that were not from a related party. *The Second Class Township Code* and the Ethics Act requires contracts over \$500 be awarded through an open and public bidding process. The \$280.00 was included in the finding because the total amount paid to the business was over \$500.00. The Department of Transportation will determine if \$6,627.10 will be required to be reimbursed to the township's Liquid Fuels Tax Fund. During our next examination, we will determine if the municipality complied with our recommendations.

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF EXIT CONFERENCE
FOR THE PERIOD
JANUARY 1, 2019 TO DECEMBER 31, 2019

An exit conference was held July 9, 2020. Those participating were:

TOWNSHIP OF LE BOEUF

Mrs. Catherine M. Wise, Secretary/Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Joel S. Schwartz, Auditor

Mr. Mark A. DiVecchio, Auditor

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

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2019 TO DECEMBER 31, 2019

This report was initially distributed to:

Yassmin Gramian, P.E.
Acting Secretary
Department of Transportation

Township of Le Boeuf
Erie County
14270 Flatts Road
Waterford, PA 16441

The Honorable James Glover
Chairman of the Board of Supervisors

Mrs. Catherine M. Wise
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.