

ATTESTATION ENGAGEMENT

Township of Le Boeuf

Erie County, Pennsylvania

25-211

Liquid Fuels Tax Fund

For the Period

January 1, 2020 to December 31, 2020

December 2021



Commonwealth of Pennsylvania
Department of the Auditor General

Timothy L. DeFoor • Auditor General



Commonwealth of Pennsylvania
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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 Le Boeuf, Erie County, for the period January 1, 2020 to December 31, 2020. 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.

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, 2020 to December 31, 2020, in accordance with the criteria described in the Background section of this report and the Department of Transportation's *Publication 9*.

Independent Auditor's Report (Continued)

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.

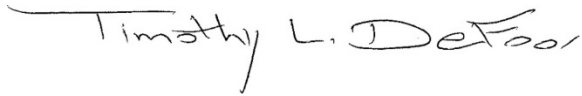
As part of obtaining reasonable assurance about whether the Form MS-965 is free from material misstatement, we performed tests of the Township of Le Boeuf, Erie County's compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct 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 - Recurring.

Independent Auditor's Report (Continued)

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

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.

A handwritten signature in black ink that reads "Timothy L. DeFoor". The signature is written in a cursive style with a long horizontal line extending to the left of the first letter.

Timothy L. DeFoor
Auditor General
November 1, 2021

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TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

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, 2020 TO DECEMBER 31, 2020

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:

2017	2018	2019	2020
\$10,700.00	\$10,900.00	\$11,100.00	\$11,300.00

- 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:

2017	2018	2019	2020
\$10,700.00	\$10,900.00	\$11,100.00	\$11,300.00

- 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, 2020 TO DECEMBER 31, 2020

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, 2020 TO DECEMBER 31, 2020

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
 2020 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	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	13,258.70	-	13,258.70
Traffic control devices	2,967.09	-	2,967.09
Street lighting	-	-	-
Storm sewers and drains	-	-	-
Repairs of tools and machinery	56,259.61	-	56,259.61
Maintenance and repair of roads and bridges	136,018.98	4,310.22	140,329.20
Highway construction and rebuilding projects	-	-	-
Miscellaneous	4,310.22	(4,310.22)	-
	<u>4,310.22</u>	<u>(4,310.22)</u>	<u>-</u>
Total (To Section 2, Line 5)	<u>\$ 212,814.60</u>	<u>\$ -</u>	<u>\$ 212,814.60</u>

TOWNSHIP OF LE BOEUF
 ERIE COUNTY
 LIQUID FUELS TAX FUND
 2020 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, 2020	\$ 2,083.79	\$ -	\$ 2,083.79
Receipts:			
2. State allocation	153,952.56	-	153,952.56
2a. Turnback allocation	37,960.00	-	37,960.00
2b. Interest on investments	294.30	-	294.30
2c. Miscellaneous	22,140.30	-	22,140.30
3. Total receipts	214,347.16	-	214,347.16
4. Total funds available	216,430.95	-	216,430.95
5. Expenditures (Section 1)	212,814.60	-	212,814.60
6. Balance, December 31, 2020	<u>\$ 3,616.35</u>	<u>\$ -</u>	<u>\$ 3,616.35</u>

TOWNSHIP OF LE BOEUF
 ERIE COUNTY
 LIQUID FUELS TAX FUND
 2020 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	\$ 2,083.79	\$ -	\$ 2,083.79
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	38,382.51	-	38,382.51
3. PENNDOT approved adjustments	<u>3,000.00</u>	<u>-</u>	<u>3,000.00</u>
4. Total funds available for equipment acquisition	43,466.30	-	43,466.30
5. Less: Major equipment expenditures	<u>-</u>	<u>-</u>	<u>-</u>
6. Remainder	<u>43,466.30</u>	<u>-</u>	<u>43,466.30</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 3,616.35</u>	<u>\$ -</u>	<u>\$ 3,616.35</u>

TOWNSHIP OF LE BOEUF
 ERIE COUNTY
 LIQUID FUELS TAX FUND
 AUDITOR DESCRIPTION OF SELECT TRANSACTIONS
 FOR THE PERIOD
 JANUARY 1, 2020 TO DECEMBER 31, 2020

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” and “Miscellaneous” because expenditures of \$4,310.22 were misclassified.

Miscellaneous Receipts

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

Source	Description	Amount
Local Business	Sale of equipment	\$ 3,000.00
Union Township	Turnback reimbursement	680.00
Local Business	Sale of pipe	1,190.00
Erie County	Bridge inspection	1,913.20
Mill Village Cemetery Association	Reimbursement for road work	4,365.00
Mill Village Borough	Reimbursement for road work	4,365.00
General Fund	Reimbursement (see Summary Of Prior Examination Recommendations)	6,627.10
Total		<u>\$22,140.30</u>

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Finding - Related Party Transactions - Recurring

We cited the municipality for related party transactions in our prior examination for the period January 1, 2019 to December 31, 2019. Our current examination disclosed that the township expended \$1,355.73 during 2020 from the Liquid Fuels Tax Fund for trucking and hauling charges. The Chairman of the Board of Supervisors is the father-in-law to the owner of the trucking company that was hired during 2020 to haul gravel utilized by the township for use on its roads. Because of the relationship between the Chairman of the Board of Supervisors and the owner of the trucking company, the township was required to award the contract through the public bid process; however, this did not occur. The township secretary/treasurer stated that she was not aware that related party transactions were not permitted until they were informed at the exit conference of our prior examination on July 9, 2020. The township made no payments from the Liquid Fuels Tax Fund to this company after July 30, 2020. Due to the Chairman of the Board of Supervisor's father-in-law's financial interest in the company, and the lack of an open and public 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.

Section 68102(i) of the *The Second Class Township Code*, 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. . . .¹

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

¹ FN 53 P.S. § 68102(i), as amended.

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Finding - Related Party Transactions - Recurring (Continued)

Section 1103(f) of The Public Official and Employee Ethics Act (“Ethics Act”) 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.²

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 \$1,355.73 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.

This condition occurred because the township was not aware that related party transactions were not permitted until they were informed at the exit conference of our prior examination on July 9, 2020.

Recommendations

We recommend that the township reimburse \$1,355.73 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We strongly recommend that, in the future, in consultation with its solicitor, if needed, the township make every effort to comply with *The Second Class Township Code* and the Ethics Act.

Management’s Response

The secretary/treasurer stated:

We are aware of this, but it continued on the following year. It has been corrected.

² FN 65 P.S. § 1103(f).

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Finding - Related Party Transactions - Recurring (Continued)

Auditor's Conclusion

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 PRIOR EXAMINATION RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Summary Of Prior Examination Recommendations

In our prior report, we recommended that the Department of Transportation review our examination finding to determine if the municipality should reimburse \$6,627.10 to its Liquid Fuels Tax Fund for related party transactions.

During our current examination, we reviewed a letter dated September 25, 2020, from the Department of Transportation directing the municipality to reimburse \$6,627.10 to its Liquid Fuels Tax Fund. We noted that the municipality reimbursed this amount to its Liquid Fuels Tax Fund on October 8, 2020.

In our prior report, we also recommended that the municipality comply with *The Second Class Township Code* and the Ethics Act, as it relates to related party transactions.

During our current examination, we noted that the municipality did not comply with our recommendations (see Finding).

TOWNSHIP OF LE BOEUF
ERIE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF EXIT CONFERENCE
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

An exit conference was held August 3, 2021. Those participating were:

TOWNSHIP OF LE BOEUF

Mrs. Catherine M. Wise, Secretary/Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Joel S. Schwartz, 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, 2020 TO DECEMBER 31, 2020

This report was initially distributed to:

The Honorable Yassmin Gramian, P.E.
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.