



**TOWNSHIP OF ANTHONY
LYCOMING COUNTY
41-201**

**LIQUID FUELS TAX FUND
EXAMINATION REPORT**

**FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011**

Released April 2013

COMMONWEALTH OF PENNSYLVANIA
EUGENE A. DEPASQUALE - AUDITOR GENERAL
DEPARTMENT OF THE AUDITOR GENERAL





TOWNSHIP OF ANTHONY
LYCOMING COUNTY
41-201

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EXAMINATION REPORT

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TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

Background

The Liquid Fuels Tax Municipal Allocation Law, Title 72 P.S. § 2615.5, 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 Liquid Fuels Tax Fund money and annual maintenance payments that it receives into a special fund called 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 this 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. To qualify for its annual allocation, each municipality shall submit the following documents and information to the Department of Transportation:

1. Evidence that the treasurer is bonded in accordance with the law, or that its treasurer is a bank requiring no bond by January 31 of each year.
2. A report indicating the manner in which its liquid fuels tax allocation was expended in the previous year (Form MS-965) by January 31 of each year.
3. A report of elected and appointed officials by January 31 of each year.
4. A Survey of Financial Condition by March 15 of each year.

Department of Transportation *Publication 9* contains the policies and procedures that govern the use of Liquid Fuels Tax Fund money. However, if there is a difference between *Publication 9* and any legislation, the legislation shall govern.





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EUGENE A. DePASQUALE
AUDITOR GENERAL

Independent Auditor's Report

The Honorable Barry J. Schoch, P.E.
Secretary
Department of Transportation
Harrisburg, PA 17120

We examined the accompanying Forms MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Township of Anthony, Lycoming County, for the period January 1, 2010 to December 31, 2011. The municipality's management is responsible for the Forms MS-965. Our responsibility is to express an opinion on the Forms 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. An examination includes examining, on a test basis, evidence supporting the Township of Anthony, Lycoming County's Forms MS-965 for the period January 1, 2010 to December 31, 2011 and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides 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 discussed in Finding No. 1, the township expended \$7,056.00 and \$3,528.00 in excess of the approved amount for road project Nos. 10-41201-01 and 11-41201-01, respectively. On January 26, 2011, the municipality reimbursed \$7,056.00 to its Liquid Fuels Tax Fund. Additionally, the municipality reimbursed \$3,528.00 to its Liquid Fuels Tax Fund on March 16, 2012, which was subsequent to our examination period. Further, as discussed in Finding No. 2, during 2011 the township expended \$4,445.00 for equipment rental. However, the equipment was owned by the road superintendent and was restrictively bid.

In our opinion, except for the matters discussed in the preceding paragraph, the Forms MS-965 With Adjustments present, in all material respects, the information required by the Pennsylvania Department of Transportation for the Liquid Fuels Tax Fund of the Township of Anthony, Lycoming County, for the period January 1, 2010 to December 31, 2011, in conformity with the criteria set forth in Note 1.

In accordance with *Government Auditing Standards*, we are required to report findings of significant deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Forms MS-965 and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether the Forms MS-965 are 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 Forms MS-965 or on compliance and other matters; accordingly, we express no such opinions.

A control deficiency 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 misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the Township of Anthony, Lycoming County's ability to initiate, authorize, record, process, or report data reliably in accordance with the applicable criteria such that there is more than a remote likelihood that a misstatement of the Township of Anthony, Lycoming County's Forms MS-965 that is more than inconsequential will not be prevented or detected by the Township of Anthony, Lycoming County's internal control.

Independent Auditor's Report (Continued)

A material weakness is a significant deficiency or combination of significant deficiencies that results in more than a remote likelihood that a material misstatement of the Forms MS-965 will not be prevented or detected by the Township of Anthony, Lycoming County's internal control.

Our consideration of internal control over reporting on the Forms MS-965 was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any significant deficiencies or material weaknesses, as defined above, in internal control over reporting on the Forms MS-965.

The results of our tests disclosed the following instances of noncompliance that are required to be reported under *Government Auditing Standards*:

- Liquid Fuels Money Overexpended On Projects.
- Related Party Transactions And Restrictive Bidding.

This report is intended solely for the information and use of the Pennsylvania Department of Transportation and the management of the Township of Anthony, Lycoming County, and is not intended to be and should not be used by anyone other than these specified parties.



April 20, 2012

EUGENE A. DEPASQUALE
Auditor General



TOWNSHIP OF ANTHONY
 LYCOMING COUNTY
 LIQUID FUELS TAX FUND
 2010 FORM MS-965 – SECTION 1
 WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Major equipment purchases	\$ 4,367.09	\$ -	\$ 4,367.09
Minor equipment purchases	-	-	-
Computer/Computer related training	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	3,611.53	-	3,611.53
Traffic control devices	-	-	-
Street lighting	-	-	-
Storm sewers and drains	-	-	-
Repairs of tools and machinery	-	-	-
Maintenance and repair of roads and bridges	27,088.42	-	27,088.42
Highway construction and rebuilding projects	56,616.07	-	56,616.07
Miscellaneous	-	-	-
 Total (To Section 2, Line 5)	 <u>\$ 91,683.11</u>	 <u>\$ -</u>	 <u>\$ 91,683.11</u>

Notes To Forms MS-965 With Adjustments are an integral part of this report.

TOWNSHIP OF ANTHONY
 LYCOMING COUNTY
 LIQUID FUELS TAX FUND
 2010 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, 2010	\$ 49,453.13	\$ -	\$ 49,453.13
Receipts:			
2. State allocation	53,785.10	-	53,785.10
2a. Turnback allocation	7,480.00	-	7,480.00
2b. Interest on investments (Note 3)	64.27	-	64.27
2c. Miscellaneous (Note 4)	2,132.00	-	2,132.00
3. Total receipts	<u>63,461.37</u>	<u>-</u>	<u>63,461.37</u>
4. Total funds available	<u>112,914.50</u>	<u>-</u>	<u>112,914.50</u>
5. Expenditures (Section 1)	<u>91,683.11</u>	<u>-</u>	<u>91,683.11</u>
6. Balance, December 31, 2010	<u>\$ 21,231.39</u>	<u>\$ -</u>	<u>\$ 21,231.39</u>

Notes To Forms MS-965 With Adjustments are an integral part of this report.

TOWNSHIP OF ANTHONY
 LYCOMING COUNTY
 LIQUID FUELS TAX FUND
 2010 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	\$ 37,032.05	\$ -	\$ 37,032.05
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	12,253.02	-	12,253.02
3. PENNDOT approved adjustments	<u>2,102.00</u>	<u>-</u>	<u>2,102.00</u>
4. Total funds available for equipment acquisition	51,387.07	-	51,387.07
5. Less: Major equipment expenditures	<u>4,367.09</u>	<u>-</u>	<u>4,367.09</u>
6. Remainder	<u><u>47,019.98</u></u>	<u><u>-</u></u>	<u><u>47,019.98</u></u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u><u>\$ 21,231.39</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 21,231.39</u></u>

Notes To Forms MS-965 With Adjustments are an integral part of this report.

TOWNSHIP OF ANTHONY
 LYCOMING COUNTY
 LIQUID FUELS TAX FUND
 2011 FORM MS-965 – SECTION 1
 WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Major equipment purchases	\$ -	\$ -	\$ -
Minor equipment purchases	-	-	-
Computer/Computer related training	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	388.46	-	388.46
Traffic control devices	-	-	-
Street lighting	-	-	-
Storm sewers and drains	-	-	-
Repairs of tools and machinery	-	-	-
Maintenance and repair of roads and bridges	85,456.80	-	85,456.80
Highway construction and rebuilding projects	-	-	-
Miscellaneous	-	-	-
 Total (To Section 2, Line 5)	 <u>\$ 85,845.26</u>	 <u>\$ -</u>	 <u>\$ 85,845.26</u>

Notes To Forms MS-965 With Adjustments are an integral part of this report.

TOWNSHIP OF ANTHONY
 LYCOMING COUNTY
 LIQUID FUELS TAX FUND
 2011 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, 2011	\$ 21,231.39	\$ -	\$ 21,231.39
Receipts:			
2. State allocation	55,033.89	-	55,033.89
2a. Turnback allocation	7,480.00	-	7,480.00
2b. Interest on investments (Note 3)	65.44	-	65.44
2c. Miscellaneous (Note 4)	29,155.03	-	29,155.03
3. Total receipts	<u>91,734.36</u>	<u>-</u>	<u>91,734.36</u>
4. Total funds available	<u>112,965.75</u>	<u>-</u>	<u>112,965.75</u>
5. Expenditures (Section 1)	<u>85,845.26</u>	<u>-</u>	<u>85,845.26</u>
6. Balance, December 31, 2011	<u><u>\$ 27,120.49</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 27,120.49</u></u>

Notes To Forms MS-965 With Adjustments are an integral part of this report.

TOWNSHIP OF ANTHONY
 LYCOMING COUNTY
 LIQUID FUELS TAX FUND
 2011 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	\$ 21,231.39	\$ -	\$ 21,231.39
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	12,502.78	-	12,502.78
3. PENNDOT approved adjustments	<u>-</u>	<u>-</u>	<u>-</u>
4. Total funds available for equipment acquisition	33,734.17	-	33,734.17
5. Less: Major equipment expenditures	<u>-</u>	<u>-</u>	<u>-</u>
6. Remainder	<u>33,734.17</u>	<u>-</u>	<u>33,734.17</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 27,120.49</u>	<u>\$ -</u>	<u>\$ 27,120.49</u>

Notes To Forms MS-965 With Adjustments are an integral part of this report.

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

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 that cost in excess of \$4,000.00.
- Minor equipment purchases are purchases of road machinery and road equipment that cost \$4,000.00 or less.
- 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 generally received from the Department of Transportation during the first week in April of each year. The amount the municipality receives is based half on its population and half on its road mileage.
- The turnback allocation is generally received from the Department of Transportation during the first week in April of each year. A municipality receives a yearly turnback allocation based on road mileage for all roads that were transferred to the municipality from the Commonwealth of Pennsylvania through the Highway Transfer Program.
- 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.

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

1. Criteria (Continued)

Section 3 (Continued)

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 Forms MS-965 have 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 Forms MS-965 With Adjustments is restricted to the Liquid Fuels Tax Fund, which represents a segment of the entity.

Basis Of Accounting

The accompanying Forms MS-965 With Adjustments are 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.

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

1. Criteria (Continued)

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 Second Class Township Code, Title 53 P.S. § 68204, authorizes the township 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 loan's 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.

There were no deposits exposed to custodial credit risk as of December 31, 2011. Custodial credit risk, as defined by GASB No. 40, 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.

TOWNSHIP OF ANTHONY
 LYCOMING COUNTY
 LIQUID FUELS TAX FUND
 NOTES TO FORMS MS-965 WITH ADJUSTMENTS
 FOR THE PERIOD
 JANUARY 1, 2010 TO DECEMBER 31, 2011

2. Deposits (Continued)

Fund Balance

The fund balance as of December 31, 2011 consists of the following:

Cash	<u>\$27,120.49</u>
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3. Interest On Investments

Our examination disclosed that the municipality deposited idle liquid fuels tax money in an interest-bearing account which earned \$64.27 during 2010, and \$65.44 during 2011, thus providing additional funds for road maintenance and repairs.

4. 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>2010</u>	<u>2011</u>
Vendor	Sale of equipment	\$2,102.00	\$ -
Vendor	Refund of stop payment fee	30.00	-
General Fund	2010 County Aid (Finding No. 1)	-	7,056.00
General Fund	Reimbursement (Comment)	<u> </u>	<u>22,099.03</u>
Total		<u>\$2,132.00</u>	<u>\$29,155.03</u>

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
NOTES TO FORMS MS-965 WITH ADJUSTMENTS
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5. Bank Loan

On August 24, 2005, the municipality purchased a 1997 dump truck for \$40,000.00. The municipality made down payments of \$10,000.00 from both the Liquid Fuels Tax Fund and the General Fund. The remaining \$20,000.00 was borrowed from the Pennsylvania Infrastructure Bank. The term of the loan was for five years at an interest rate of three percent. Principal and interest payments of \$4,367.09 are due annually. Prior years' principal and interest payments from the Liquid Fuels Tax Fund were \$15,760.10 and \$1,708.26 respectively.

During the current examination period the municipality paid principal of \$4,239.90 and interest of \$127.19 from the Liquid Fuels Tax Fund. These amounts are reflected in major equipment purchases on the 2010 Form MS-965 – Section 1. The loan was paid-in-full on October 31, 2010.



TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

Finding No. 1 - Liquid Fuels Money Overexpended On Projects

Our examination disclosed that the municipality expended \$56,616.07 of Liquid Fuels Tax Fund money on construction project No. 10-41201-01. However, the amount approved to be expended from the Liquid Fuels Tax Fund for this project was \$49,560.07. The difference of \$7,056.00 should have been paid directly from the General Fund. Additionally, the municipality expended \$38,985.00 of Liquid Fuels Tax Fund money on construction project No.11-41201-01. However, the amount approved to be expended from the Liquid Fuels Tax Fund for this project was \$35,457.00. The difference of \$3,528.00 should have been paid directly from the General Fund.

The Department of Transportation's Regulations do not permit a municipality to expend Liquid Fuels Tax Fund money in excess of the amount approved on Municipal Services Completion Report Form MS-999.

On January 26, 2011, the municipality reimbursed \$7,056.00 to its Liquid Fuels Tax Fund. Additionally, the municipality reimbursed \$3,528.00 to its Liquid Fuels Tax Fund on March 16, 2012, which was subsequent to our examination period.

Recommendation

We recommend that, in the future, the municipality expend only the approved amount of Liquid Fuels Tax Fund money on road construction projects.

Management's Response

The secretary/treasurer stated:

I understand the finding.

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
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Finding No. 1 - Liquid Fuels Money Overexpended On Projects (Continued)

Auditor's Conclusion

Municipalities are not permitted to expend more than the approved amount of Liquid Fuels Tax Fund money on a project. During our next examination we will determine if the municipality complied with our recommendation.

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
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Finding No. 2 - Related Party Transactions And Restrictive Bidding

Our examination disclosed that the township expended \$4,445.00 during 2011 from the Liquid Fuels Tax Fund for rental of equipment for road work. The road superintendent who is an employee of the township owns the road equipment and gave a written description of his equipment that was advertised for rental. The road superintendent was awarded the contract for the equipment rental when no bids were received after advertising twice for the equipment rental. The road superintendent operates his own equipment and bills the township for equipment hours. Due to the road superintendent's financial interest in the company and his participation in the contract, this contract appears to violate *The Second Class Township Code* and The Public Official and Employee Ethics Act. Therefore, it 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 ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
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Finding No. 2 - Related Party Transactions And Restrictive Bidding (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.

Furthermore, the advertisement for this purchase requested sealed proposals for a Caterpillar 420E backhoe and a Caterpillar D3G dozer. The township expended \$3,280.00 for the rental and hauling of those two pieces of equipment. Caterpillar is a Brand name. The use of Brand names in advertising for equipment without including the words “or its equivalent,” is considered restrictive bidding, and therefore, is prohibited by the Department of Transportation’s *Publication 9*, § 449.3(f), which states:

Brand names. In advertising for equipment to be rented or purchased, or for materials to be purchased or delivered in place, it is unlawful to require or specify any particular make or brand thereof, thereby excluding other makes or brands; however, a particular brand name or its equivalent may be specified if equal consideration is given to all brands which are reasonably similar to the specified brand. Such specifications must be reasonable and not merely imposed in order to exclude some brands of equipment or material in favor of other brands.

Because this contract violates *The Second Class Township Code*, the Ethics Act, and the Department of Transportation’s *Publication 9* the township could be required by the Pennsylvania Department of Transportation to reimburse \$4,445.00 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.

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

Finding No. 2 - Related Party Transactions And Restrictive Bidding (Continued)

Recommendations

We recommend that the municipality reimburse \$4,445.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the municipality follow with the Department of Transportation's *Publication 9* if it uses Brand names in future advertisements for purchases as cited above.

Additionally, we recommend that, in the future, the township comply with *The Second Class Township Code* and the Ethics Act.

Management's Response

The secretary/treasurer stated:

We began a discussion internally regarding our concern with correctly interpreting *The Second Class Township Code*, Section 3102 (i). We contacted our Solicitor, explained the complete situation in detail and requested his advice. He provided his opinion to us in writing (which is available upon request). He advised us to advertise for bids on an annual basis for hourly rental of the types of equipment which we wish to use.

We contacted our Municipal Services Representative for assistance with the Equipment Rental Proposal/Contract and regarding the advertisement requirements. Based on the information given, we genuinely intended to bid properly. We did not knowingly intend to restrict any business from bidding. The first time advertised we received no bids. We called our Municipal Service Representative and he stated "that we must go through the process twice, once completed twice we can use whoever." The second time advertised we also received no bids. We never attempted to conceal the bidding process which demonstrates our pure intention.

Our intention has been and will continue to be open and honest. We sincerely sought to do what was right. We were very straightforward and discussed it openly at several meetings and explained the situation in detail to both our Solicitor and our Municipal Service Representative. Our intentions were honorable.

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

Finding No. 2 - Related Party Transactions And Restrictive Bidding (Continued)

Auditor's Conclusion

The municipality should not have used Brand names when advertising for the rental of equipment. Additionally, the road superintendant should not have written the bid specs and should not have participated in the contract. During our next examination we will determine if the municipality complied with our recommendations.

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
COMMENT
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

Comment – 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 \$22,099.03 to its Liquid Fuels Tax Fund for failing to advertise for bids.

During our current examination we reviewed a letter dated June 24, 2011, from the Department of Transportation informing the municipality to reimburse \$22,099.03 to its Liquid Fuels Tax Fund. We noted that the municipality reimbursed this amount to its Liquid Fuels Tax Fund on September 9, 2011.

In our prior report we also recommended that the municipality comply with *The Second Class Township Code* and the Department of Transportation's *Publication 9* by advertising for bids for all purchases over \$10,000.00.

During our current examination we noted that the municipality complied with our recommendation.

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF EXIT CONFERENCE
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

An exit conference was held April 20, 2012. Those participating were:

TOWNSHIP OF ANTHONY

Mrs. Shelly S. Davis, Secretary/Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Mrs. Edith M. Carpenter, Auditor

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

TOWNSHIP OF ANTHONY
LYCOMING COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2010 TO DECEMBER 31, 2011

This report was initially distributed to:

The Honorable Barry J. Schoch, P.E.
Secretary
Department of Transportation

Mr. John J. Contino
Executive Director
Pennsylvania State Ethics Commission

Township of Anthony
Lycoming County
402 Dutch Hill Road
Cogan Station, PA 17728

The Honorable Christopher S. Davis	Chairman of the Board of Supervisors
Mrs. Shelly S. Davis	Secretary/Treasurer
The Honorable Duane R. Martzall	Vice-Chairman of the Board of Supervisors

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, 318 Finance Building, Harrisburg, PA 17120. To view this report online or to contact the Department of the Auditor General, please access our web site at www.auditorgen.state.pa.us.