ATTESTATION ENGAGEMENT

City of Philadelphia

Philadelphia County, Pennsylvania 67-301

Liquid Fuels Tax Fund
For the Period
January 1, 2016 to December 31, 2016

April 2018



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

The Honorable Leslie Richards Secretary Department of Transportation Harrisburg, PA 17120

We examined the accompanying Form MS-965 With Adjustments for the Liquid Fuels Tax Fund of the City of Philadelphia, Philadelphia County, for the period January 1, 2016 to December 31, 2016. The municipality's management is responsible for presenting the Form MS-965 in accordance with the criteria set forth in Note 1. Our responsibility is to express an opinion on the Form MS-965 With Adjustments based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Form MS-965 is 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*.

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

Independent Auditor's Report (Continued)

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 City of Philadelphia, Philadelphia County, for the period January 1, 2016 to December 31, 2016, in accordance with the criteria set forth in Note 1.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that have a material effect on the Form MS-965; and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the Form MS-965. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the Form MS-965 is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over reporting on the Form MS-965 or on compliance and other matters; accordingly, we express no such opinions.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Form MS-965 will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of the internal control was for the limited purpose of expressing an opinion on whether the Form MS-965 is presented in accordance with the criteria described above and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. We did identify a certain deficiency in internal control, described in the finding listed below, that we consider to be a material weakness in internal control:

• Untimely Deposit Of Turnback Allocation And Liquid Fuels Allocation Deposited Into The General Fund - Recurring.

As part of obtaining reasonable assurance about whether the Form MS-965 is free from material misstatement, we performed tests of the City of Philadelphia, Philadelphia 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*.

<u>Independent Auditor's Report (Continued)</u>

The prior examination finding contained in this report cites conditions that existed in the operation of the municipality during the previous three engagement periods and were not corrected communicated as findings again during the current examination period. The municipality should strive to comply with the recommendations and corrective actions noted in this report.

The purpose of this report is to determine whether the municipality's Liquid Fuels Tax Fund money is spent in accordance with the laws and regulations identified in the Background section of this report and the Department of Transportation's *Publication 9*. This report is not suitable for any other purpose.

We appreciate the courtesy extended by the City of Philadelphia, Philadelphia County, to us during the course of our examination. If you have any questions, please feel free to contact Michael B. Kashishian, CPA, CGAP, CFE, Director, Bureau of County Audits, at 717-787-1363.

March 29, 2018

Eugene A. DePasquale Auditor General

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CITY OF PHILADELPHIA PHILADELPHIA COUNTY LIQUID FUELS TAX FUND BACKGROUND FOR THE PERIOD JANUARY 1, 2016 TO DECEMBER 31, 2016

Background

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

CITY OF PHILADELPHIA PHILADELPHIA COUNTY LIQUID FUELS TAX FUND BACKGROUND FOR THE PERIOD JANUARY 1, 2016 TO DECEMBER 31, 2016

Background (Continued)

- 3. Submit the Pennsylvania Department of Community and Economic Development's (DCED) Report of Elected and Appointed Officials by January 31st and the Survey of Financial Condition By March 15th.
- 4. Ensure resolution of all Contractor Responsibility Program (CRP) holds and blocks imposed by the Department of Revenue and the Department of Labor and Industry.
- 5. Ensure resolution of all reimbursements required as a result of audits performed by the Department of the Auditor General or monitoring reviews performed by the Department of Transportation's Financial Consultants.

CITY OF PHILADELPHIA PHILADELPHIA COUNTY LIQUID FUELS TAX FUND 2016 FORM MS-965 – SECTION 1 WITH ADJUSTMENTS

Expenditure Summary	Reported	Adjustments (Note 4)	Adjusted Amount
Major equipment purchases	\$ -	\$ 3,770,912.16	\$ 3,770,912.16
Minor equipment purchases	Ψ -	ψ 5,770,712.10	ψ 3,770,712.10
Computer/Computer related training	_	_	_
Agility projects	- -	- -	- -
Cleaning streets and gutters	2,010,000.00	-	2,010,000.00
Winter maintenance services	2,280,080.01	-	2,280,080.01
Traffic control devices	1,551,625.11	-	1,551,625.11
Street lighting	14,832,458.41	-	14,832,458.41
Storm sewers and drains	-	-	_
Repairs of tools and machinery	1,183.14	-	1,183.14
Maintenance and repair of			
roads and bridges	6,793,686.16	(3,770,912.16)	3,022,774.00
Highway construction and			
rebuilding projects	-	-	_
Miscellaneous	(9,185.00)	9,185.00	
Total (To Section 2, Line 5)	\$ 27,459,847.83	\$ 9,185.00	\$ 27,469,032.83

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

CITY OF PHILADELPHIA PHILADELPHIA COUNTY LIQUID FUELS TAX FUND 2016 FORM MS-965 – SECTION 2 WITH ADJUSTMENTS

Fund Balance	Reported	Adjustments (Note 4)	Adjusted Amount
1. Balance, January 1, 2016	\$ 20,856,968.81	\$ -	\$ 20,856,968.81
Receipts:			
2. State allocation	33,423,065.25	-	33,423,065.25
2a. Turnback allocation2b. Interest on investments (Note 3)	2,139.09	-	2,139.09
2c. Miscellaneous (Note 5)	2,139.09	9,185.00	9,185.00
3. Total receipts	33,425,204.34	9,185.00	33,434,389.34
4. Total funds available	54,282,173.15	9,185.00	54,291,358.15
5. Expenditures (Section 1)	27,459,847.83	9,185.00	27,469,032.83
6. Balance, December 31, 2016	\$ 26,822,325.32	\$ -	\$ 26,822,325.32

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

CITY OF PHILADELPHIA PHILADELPHIA COUNTY LIQUID FUELS TAX FUND 2016 FORM MS-965 – SECTION 3 WITH ADJUSTMENTS

Equipment Balance	Reported	Adjustments (Note 4)	Adjusted Amount
1. Prior year equipment balance	\$ 20,856,968.81	\$ (464,596.96)	\$ 20,392,371.85
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	6,684,613.05	-	6,684,613.05
3. PENNDOT approved adjustments	-		
4. Total funds available for equipment acquisition	27,541,581.86	(464,596.96)	27,076,984.90
5. Less: Major equipment expenditures	-	3,770,912.16	3,770,912.16
6. Remainder	27,541,581.86	(4,235,509.12)	23,306,072.74
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	\$ 26,822,325.32	\$(3,516,252.58)	\$ 23,306,072.74

1. Criteria

Section 1

This section of Form MS-965 With Adjustments provides a summary of Liquid Fuels Tax Fund expenditures by category. Categories requiring explanation include:

• Major equipment purchases are purchases of road machinery and road equipment with varying yearly costs in excess of the amounts indicated below:

2012	2013	2014	2015/2016
\$10,000.00	\$10,200.00	\$10,300.00	\$10,500.00

• 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:

2012	2013	2014	2015/2016
\$10,000.00	\$10,200.00	\$10,300.00	\$10,500.00

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

Section 2

This section of Form MS-965 With Adjustments provides information on the fund balance. Categories requiring explanation include:

- The state allocation is available from the Department of Transportation in March of each year. The amount the municipality receives is based half on its population and half on its road mileage.
- Municipalities that transferred roads from the Commonwealth of Pennsylvania to the municipality through the Highway Transfer Program receive annual turnback allocations in March of each year from the Department of Transportation. Turnback allocations are based on the mileage of the roads transferred.

1. <u>Criteria (Continued)</u>

Section 2 (Continued)

• Expenditures include the total transferred from Section 1.

Section 3

This section of Form MS-965 With Adjustments determines if the municipality expended Liquid Fuels Tax Fund money in excess of the permissible amount for equipment and the balance that the municipality may carry forward for the purchase of equipment to the subsequent year.

Department of Transportation *Publication 9* requires that the amount expended for equipment purchases in a given year not exceed the sum of the equipment balance carried forward from the previous year and 20 percent of the current year's Liquid Fuels Tax Fund allocation and, if applicable, 20 percent of the turnback allocation plus other Department of Transportation approved adjustments.

If the municipality spent in excess of the amount listed on Line 4, the excess must be reimbursed to the Liquid Fuels Tax Fund.

The equipment balance to be carried forward for the subsequent year is the lesser of the amount on Line 6 or the ending fund balance on Line 6 of Section 2, but not less than zero.

Basis Of Presentation

The financial activities of the municipality are accounted for in separate funds. The Liquid Fuels Tax Fund is used to account for state aid revenues from the Pennsylvania Department of Transportation used primarily for building and improving local roads and bridges. The Form MS-965 has been prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Transportation as a result of the Fuels Tax Act 655, dated 1956 and as amended, which does not constitute a complete presentation of the entity's assets, liabilities, expenses, and fund balance. Accordingly, the presentation of Form MS-965 With Adjustments is restricted to the Liquid Fuels Tax Fund, which represents a segment of the entity.

1. <u>Criteria (Continued)</u>

Basis Of Accounting

The accompanying Form MS-965 With Adjustments is prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Transportation. Under this method, revenues are recognized when received and expenditures are recorded when paid.

General Fixed Assets

General fixed assets are recognized as expenditures at the time of purchase. No depreciation has been provided on the heavy equipment used to maintain and repair roads and bridges.

2. Deposits

The Third Class City Code, Title 53 P.S. § 36804.1, authorizes the city 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 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.

CITY OF PHILADELPHIA PHILADELPHIA COUNTY LIQUID FUELS TAX FUND NOTES TO FORM MS-965 WITH ADJUSTMENTS FOR THE PERIOD

JANUARY 1, 2016 TO DECEMBER 31, 2016

2. <u>Deposits (Continued)</u>

There were no deposits exposed to custodial credit risk as of December 31, 2016. Custodial credit risk, as defined by GASB No. 40, as amended, includes deposits that are not covered by depository insurance and the deposits are uncollateralized, collateralized with securities held by the pledging financial institution, or collateralized with securities held by the pledging financial institution's trust department or agent but not in the municipality's name.

Fund Balance

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

Cash \$26,822,325.32

3. Interest On Investments

Our examination disclosed that the municipality deposited idle liquid fuels tax money in an interest-bearing account which earned \$2,139.09 during 2016, thus providing additional funds for road maintenance and repairs.

4. Adjustments

Section 1

Adjustments were made to "Major equipment purchases" and "Maintenance and repair of roads and bridges" because expenditures of \$3,770,912.16 were misclassified.

An adjustment of \$9,185.00 was made to "Miscellaneous" because there were no miscellaneous expenditures.

Section 2

An adjustment of \$9,185.00 was made to "Miscellaneous" because these receipts were not reported.

4. Adjustments (Continued)

Section 3

An adjustment of \$(464,596.96) was made to "Prior year equipment balance" because an incorrect equipment balance was carried forward.

An adjustment of \$3,770,912.16 was made to "Major equipment expenditures" to reflect the adjustment made to major equipment purchases in 2016 - Section 1.

5. <u>Miscellaneous Receipts</u>

On October 20, 2016, the municipality granted \$9,185.00 from its General Fund to its Liquid Fuels Tax Fund.

CITY OF PHILADELPHIA PHILADELPHIA COUNTY LIQUID FUELS TAX FUND FINDING AND RECOMMENDATION FOR THE PERIOD JANUARY 1, 2016 TO DECEMBER 31, 2016

<u>Finding - Untimely Deposit Of Turnback Allocation and Liquid Fuels Allocation Deposited</u> Into The General Fund- Recurring

We cited the city for untimely deposit of allocations and turnback allocations deposited into the General Fund in our prior three reports with the most recent being for the period January 1, 2015 to December 31, 2015. Our current examination disclosed that the 2016 Liquid Fuels Tax Fund turnback allocation of \$90,880.00, which was received on March 1, 2016, was never deposited into the Liquid Fuels Tax Fund. The check was erroneously mailed to the Parks and Recreation Department and was never deposited into any account. In 2017, The Commonwealth of Pennsylvania voided this check and re-issued another check for \$90,880.00 that was deposited into the Liquid Fuels Tax Fund on June 16, 2017, which was subsequent to our examination period.

Additionally, the 2016 Liquid Fuels Tax Fund allocation of \$33,423,065.25 was received on March 8, 2016 and should have been immediately deposited into the city's Liquid Fuels Tax Fund. However, the allocation was deposited into the city's General Fund. On May 3, 2016, the city transferred this amount from its General Fund to its Liquid Fuels Tax Fund.

The City should have internal controls in place to prevent the allocation from being deposited into the incorrect account. Furthermore, the City should have internal controls in place to timely detect if a turnback allocation has not been deposited into the Liquid Fuels Tax Fund so the error can be corrected. In this instance, the error was not corrected for more than one year.

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

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

Good internal control procedures require that all funds received be deposited immediately upon receipt. The failure to do so increases the risk that errors and misappropriations may occur and remain undetected. In addition, the risk that Liquid Fuels Tax Fund money may be used for unauthorized purposes increases when liquid fuels money is commingled with other funds.

CITY OF PHILADELPHIA PHILADELPHIA COUNTY LIQUID FUELS TAX FUND FINDING AND RECOMMENDATION FOR THE PERIOD JANUARY 1, 2016 TO DECEMBER 31, 2016

<u>Finding - Untimely Deposit Of Turnback Allocation And Liquid Fuels Allocation Deposited</u> <u>Into The General Fund - Recurring (Continued)</u>

Furthermore, had the Turnback and Liquid Fuels Tax Fund allocations been deposited into the Liquid Fuels Tax Fund in a timely manner, money may have been available for investment, potentially earning interest income which could have been used for road maintenance and repairs.

Recommendation

We again strongly recommend that the municipality establish and implement procedures to ensure all allocations are deposited immediately upon receipt and into the proper account. The failure to deposit allocations timely and into the proper account increases the risk of error and misappropriations occurring and remaining undetected for long periods of time.

Management's Response

The Fiscal Officer stated:

The City of Philadelphia has established an ACH account with the State. The MS-965 report for 2016 was already filed by the time the account was established.

Auditor's Conclusion

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

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

Summary Of 2013-2014 Examination Recommendations

In our 2013-2014 report, we recommended that the Department of Transportation review our examination finding to determine if the municipality should reimburse \$213,763.90 to its Liquid Fuels Tax Fund for nonpermisssible expenditures.

During our current examination, we reviewed a letter dated January 28, 2016, from the Department of Transportation informing the municipality to reimburse \$213,763.90 to its Liquid Fuels Tax Fund. We noted that the municipality reimbursed this amount to its Liquid Fuels Tax Fund on February 22, 2017, which was subsequent to our examination period.

Summary Of 2015 Examination Recommendations

In our prior report we recommended that the municipality:

- Ensure that its Forms MS-965 are complete and accurate.
- Establish and implement procedures to ensure all allocations are deposited immediately upon receipt and into the proper account. The failure to deposit allocations timely and into the proper account increases the risk of error and misappropriations occurring and remaining undetected for long periods of time.

During our current examination, we noted that the municipality substantially complied with our first bulleted recommendation but did not comply with the second bulleted recommendation (see Finding).

CITY OF PHILADELPHIA PHILADELPHIA COUNTY LIQUID FUELS TAX FUND SUMMARY OF EXIT CONFERENCE FOR THE PERIOD JANUARY 1, 2016 TO DECEMBER 31, 2016

An exit conference was held February 21, 2018. Those participating were:

CITY OF PHILADELPHIA

Ms. Deborah McKee, Fiscal Officer-Streets Department

Mr. Cristopher Newman, Deputy Streets Commissioner-Administration

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Fred Casella, Auditor

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

CITY OF PHILADELPHIA
PHILADELPHIA COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2016

This report was initially distributed to:

The Honorable Leslie Richards

Secretary Department of Transportation

City of Philadelphia

Philadelphia County Municipal Services Building Room 700 1401 JFK Blvd Philadelphia, PA 19102

The Honorable Darrell L. Clarke

President of Council

Ms. Deborah McKee

Fiscal Officer-Streets Department

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.