



BOROUGH OF TIDIOUTE  
WARREN COUNTY  
61-404

LIQUID FUELS TAX FUND  
EXAMINATION REPORT

FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

## CONTENTS

	<u>Page</u>
Background.....	1
Independent Auditor’s Report.....	3
Financial Section:	
2008 Form MS-965 With Adjustments .....	7
2009 Form MS-965 With Adjustments .....	10
Notes To Forms MS-965 With Adjustments.....	13
Finding And Recommendations:	
Finding - Related Party Transactions .....	17
Summary Of Exit Conference.....	19
Report Distribution .....	21



BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
BACKGROUND  
FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

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.





**Department of the Auditor General  
Commonwealth of Pennsylvania  
Harrisburg, Pennsylvania 17120-0018**

**JACK WAGNER  
AUDITOR GENERAL**

Independent Auditor's Report

The Honorable Allen D. Biehler, 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 Borough of Tidioute, Warren County, for the two years ended December 31, 2009. 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 Borough of Tidioute, Warren County's Forms MS-965 for the two years ended December 31, 2009 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*.

As discussed in the Finding and Recommendations section of this report, the borough expended \$3,342.94 from the Liquid Fuels Tax Fund during 2009 for the purchase of salt and for the hauling of road materials. However, the borough used the secretary/treasurer's husband's business to perform the work.

Independent Auditor's Report (Continued)

In our opinion, except for the matter 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 Borough of Tidioute, Warren County, for the two years ended December 31, 2009, 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 Borough of Tidioute, Warren 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 Borough of Tidioute, Warren County's Forms MS-965 that is more than inconsequential will not be prevented or detected by the Borough of Tidioute, Warren County's internal control.

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 Borough of Tidioute, Warren 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.

Independent Auditor's Report (Continued)

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

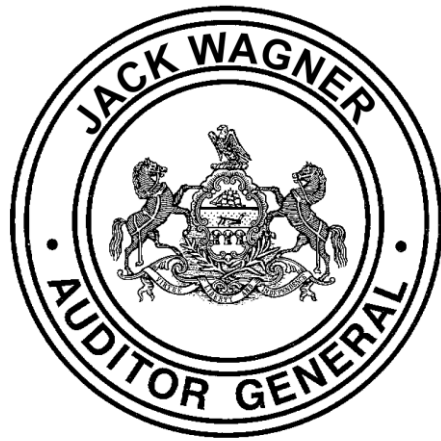
- Related Party Transactions.

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

April 29, 2010

JACK WAGNER  
Auditor General





BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
2008 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	-	-	-
Traffic control devices	-	-	-
Street lighting	-	-	-
Storm sewers and drains	-	-	-
Repairs of tools and machinery	-	-	-
Maintenance and repair of roads and bridges	-	-	-
Highway construction and rebuilding projects	-	-	-
Miscellaneous	-	-	-
	<hr/>	<hr/>	<hr/>
Total (To Section 2, Line 5)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

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

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
2008 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, 2008	\$ 46,294.67	\$ -	\$ 46,294.67
Receipts:			
2. State allocation	20,038.30	-	20,038.30
2a. Turnback allocation	-	-	-
2b. Interest on investments (Note 3)	616.20	-	616.20
2c. Miscellaneous	-	-	-
3. Total receipts	<u>20,654.50</u>	<u>-</u>	<u>20,654.50</u>
4. Total funds available	<u>66,949.17</u>	<u>-</u>	<u>66,949.17</u>
5. Expenditures (Section 1)	<u>-</u>	<u>-</u>	<u>-</u>
6. Balance, December 31, 2008	<u><u>\$ 66,949.17</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 66,949.17</u></u>

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

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
2008 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	\$ 17,043.80	\$ -	\$ 17,043.80
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	4,007.66	-	4,007.66
3. PENNDOT approved adjustments	<u>-</u>	<u>-</u>	<u>-</u>
4. Total funds available for equipment acquisition	21,051.46	-	21,051.46
5. Less: Major equipment expenditures	<u>-</u>	<u>-</u>	<u>-</u>
6. Remainder	<u>21,051.46</u>	<u>-</u>	<u>21,051.46</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 21,051.46</u>	<u>\$ -</u>	<u>\$ 21,051.46</u>

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

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
2009 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	4,261.69	-	4,261.69
Traffic control devices	-	-	-
Street lighting	-	-	-
Storm sewers and drains	-	-	-
Repairs of tools and machinery	-	-	-
Maintenance and repair of roads and bridges	27,880.00	-	27,880.00
Highway construction and rebuilding projects	-	-	-
Miscellaneous	-	-	-
 Total (To Section 2, Line 5)	 <u>\$ 32,141.69</u>	 <u>\$ -</u>	 <u>\$ 32,141.69</u>

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

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
2009 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, 2009	\$ 66,949.17	\$ -	\$ 66,949.17
Receipts:			
2. State allocation	19,293.86	-	19,293.86
2a. Turnback allocation	-	-	-
2b. Interest on investments (Note 3)	545.68	-	545.68
2c. Miscellaneous	-	-	-
3. Total receipts	<u>19,839.54</u>	<u>-</u>	<u>19,839.54</u>
4. Total funds available	<u>86,788.71</u>	<u>-</u>	<u>86,788.71</u>
5. Expenditures (Section 1)	<u>32,141.69</u>	<u>-</u>	<u>32,141.69</u>
6. Balance, December 31, 2009	<u><u>\$ 54,647.02</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 54,647.02</u></u>

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

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
2009 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	\$ 21,051.46	\$ -	\$ 21,051.46
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	3,858.77	-	3,858.77
3. PENNDOT approved adjustments	<u>-</u>	<u>-</u>	<u>-</u>
4. Total funds available for equipment acquisition	24,910.23	-	24,910.23
5. Less: Major equipment expenditures	<u>-</u>	<u>-</u>	<u>-</u>
6. Remainder	<u>24,910.23</u>	<u>-</u>	<u>24,910.23</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 24,910.23</u>	<u>\$ -</u>	<u>\$ 24,910.23</u>

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

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

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.



BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

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.

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

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 Borough Code*, Title 53 P.S § 46316, authorizes the borough 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, 2009. 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.

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

2. Deposits (Continued)

Fund Balance

The fund balance as of December 31, 2009 consists of the following:

Cash	<u>\$54,647.02</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 \$616.20 during 2008, and \$545.68 during 2009, thus providing additional funds for road maintenance and repairs.

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
FINDING AND RECOMMENDATIONS  
FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

Finding - Related Party Transactions

Our examination disclosed that during 2009 the borough expended \$3,342.94 from the Liquid Fuels Tax Fund for the purchase of salt and for the hauling of road materials by a company owned by the secretary/treasurer's husband. Due to the secretary/treasurer's husband's financial interest in the company and the lack of an open and public award process, this contract appears to violate *The Borough Code* and The Public Official and Employee Ethics Act. Therefore, it should not have been entered into by the borough.

*The Borough Code*, 53 P.S. § 46404, as amended, states, in part:

. . . no borough official, either elected or appointed, or borough 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 purchase made or contract entered into or expenditure of money made by the borough or relating to the business of the borough, involving the expenditure by the borough of more than one thousand dollars (\$1,000.00) in any calendar year, but this limitation shall not apply to cases where such officer or appointee of the borough is an employee of the person, firm or corporation to which the money is to be paid in a capacity with no possible influence on the transaction and in which he cannot be possibly benefited thereby either financially or otherwise. But in the case of a councilman or mayor, if he knows that he is within the exception just mentioned he shall so inform council and shall refrain from voting on the expenditure or any ordinance relating thereto, and shall in no manner participate therein. . . .

This information is also published in § 1404 of *The Borough Code* as published by the Local Government Commission.

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.

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
FINDING AND RECOMMENDATIONS  
FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

Finding - Related Party Transactions (Continued)

Because this contract violates *The Borough Code* and the Ethics Act the borough could be required by the Pennsylvania Department of Transportation to reimburse \$3,342.94 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 borough reimburse \$3,342.94 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the borough comply with *The Borough Code* and the Ethics Act as amended.

Management's Response

The borough officials stated:

The vendor we used is the only local Trucking Company in Tidioute with Tri-Axle and Tractor Trailer Trucks. Tidioute Borough/Southwest Wallen County Municipal Authority uses them occasionally, mainly for hauling antiskid. The majority of the amount shown in the finding (\$2,032.94 of the total 3,342.94) was for a load of road Salt which was needed quickly. Of this amount, only \$243.87 was for Trucking and the remainder was for the salt itself.

The owner's wife is the Tidioute Borough Secretary/Treasurer, but the borough manager determines which vendors and contractors are used.

Auditor's Conclusion

Because the secretary/treasurer's husband owned the business, the borough is only permitted to expend \$500.00 per year with the business without advertising for bids. The borough did not advertise for bids for the purchase of salt or hauling of road materials.

BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
SUMMARY OF EXIT CONFERENCE  
FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

An exit conference was held April 29, 2010. Those participating were:

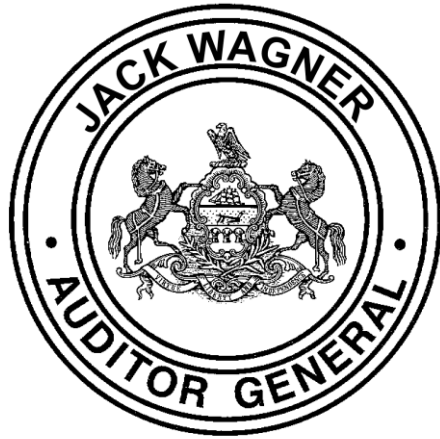
BOROUGH OF TIDIOUTE

Mrs. Crystal Heenan, Secretary/Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Joel S. Schwartz, Auditor

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



BOROUGH OF TIDIOUTE  
WARREN COUNTY  
LIQUID FUELS TAX FUND  
REPORT DISTRIBUTION  
FOR THE TWO YEARS ENDED  
DECEMBER 31, 2009

This report was initially distributed to:

The Honorable Allen D. Biehler, P.E.  
Secretary  
Department of Transportation

John J. Contino  
Executive Director  
Pennsylvania State Ethics Commission

Borough of Tidioute  
Warren County  
174 Main Street - Suite 1  
Tidioute, PA 16351

The Honorable Lee Lindemuth

President of Council

Mrs. Crystal Heenan

Secretary/Treasurer

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](http://www.auditorgen.state.pa.us).