ATTESTATION ENGAGEMENT

Borough of West Newton

Westmoreland County, Pennsylvania 64-433

Liquid Fuels Tax Fund
For the Period
January 1, 2021 to December 31, 2022

April 2024



Commonwealth of Pennsylvania Department of the Auditor General

Timothy L. DeFoor • Auditor General



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TIMOTHY L. DEFOOR AUDITOR GENERAL

Independent Auditor's Report

The Honorable Michael Carroll 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 West Newton, Westmoreland County, for the period January 1, 2021 to December 31, 2022. The municipality's management is responsible for presenting the Forms 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 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 involves performing procedures to obtain reasonable assurance about whether the Forms MS-965 are presented in accordance with the criteria described above, in all material respects. An examination involves performing procedures to obtain evidence about the Forms 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 Forms 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 required to be independent and to meet our other ethical responsibilities in accordance with ethical requirements relating to the engagement.

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

As discussed in the Finding And Recommendation section of this report, during 2022 and 2023 the municipality made payments of \$10,916.10 and \$1,091.61, respectively, on a loan that was supposed to be used to pay for a portion of a road project. However, the proceeds of the loan were deposited into the General Fund while the contractor was paid directly from the Liquid Fuels Tax Fund. The municipality reimbursed \$10,916.10 on February 8, 2023, and \$1,091.62 on March 29, 2023, to its Liquid Fuels Tax Fund, which was subsequent to the end of our examination period and \$.01 more than the amount paid.

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 West Newton, Westmoreland County, for the period January 1, 2021 to December 31, 2022, in accordance with the criteria described in the Background section of this report and the Department of Transportation's *Publication 9*.

In accordance with Government Auditing Standards, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that have a material effect on the Forms MS-965; 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 Forms 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 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 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 Forms 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 was for the limited purpose of expressing an opinion on whether the Forms MS-965 are 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:

• Improper Loan Payments Made From Liquid Fuels Tax Fund.

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

As part of obtaining reasonable assurance about whether the Forms MS-965 are free from material misstatement, we performed tests of the Borough of West Newton, Westmoreland 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 Forms 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*.

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 Borough of West Newton, Westmoreland 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.

Timothy L. DeFoor

Timothy L. Detaol

Auditor General

February 7, 2024

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Background

The Liquid Fuels Tax Municipal Allocation Law, Act 655 of 1956, as amended, see also 72 P.S. § 2615.5, et sec., provides municipalities other than counties (i.e., 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 upon: (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.

Title 75 Pa.C.S. § 9511 of the Pennsylvania Vehicle Code 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.

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:

2019	2020	2021	2022
44.400.00	444 200 00	44.5 00.00	** **********************************
\$11,100.00	\$11,300.00	\$11,500.00	\$11,800.00

• 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:

2019	2020	2021	2022
\$11,100.00	\$11,300.00	\$11,500.00	\$11,800.00

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

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.

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 Forms 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.

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND 2021 FORM MS-965 – SECTION 1 WITH ADJUSTMENTS

Expenditure Summary	 Reported	Adju	ıstments	 Adjusted Amount
Minor equipment purchases	\$ -	\$	-	\$ -
Computer/Computer related training	-		-	_
Major equipment purchases	12,424.02		-	12,424.02
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	136,672.53		-	136,672.53
Miscellaneous	 			
Total (To Section 2, Line 5)	\$ 149,096.55	\$	_	\$ 149,096.55

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND 2021 FORM MS-965 – SECTION 2 WITH ADJUSTMENTS

Fund Balance	Reported		l Adjustments		Adjusted Amount	
1. Balance, January 1, 2021	\$	63,122.87	\$	-	\$	63,122.87
Receipts:						
2. State allocation		88,415.11		-		88,415.11
2a. Turnback allocation		5,000.00		-		5,000.00
2b. Interest on investments		53.42		-		53.42
2c. Miscellaneous						
3. Total receipts		93,468.53				93,468.53
4. Total funds available		156,591.40				156,591.40
5. Expenditures (Section 1)		149,096.55				149,096.55
6. Balance, December 31, 2021	\$	7,494.85	\$		\$	7,494.85

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND 2021 FORM MS-965 – SECTION 3 WITH ADJUSTMENTS

Equipment Balance	 Reported	Adju	stments	 Adjusted Amount
1. Prior year equipment balance	\$ 25,068.24	\$	-	\$ 25,068.24
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	18,683.02		-	18,683.02
3. PENNDOT approved adjustments	 			
4. Total funds available for equipment acquisition	43,751.26		-	43,751.26
5. Less: Major equipment expenditures	 12,424.02			 12,424.02
6. Remainder	 31,327.24			 31,327.24
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	\$ 7,494.85	\$		\$ 7,494.85

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND 2022 FORM MS-965 – SECTION 1 WITH ADJUSTMENTS

Expenditure Summary	 Reported	Adj	ustments	 Adjusted Amount
Minor equipment purchases	\$ -	\$	_	\$ -
Computer/Computer related training	-		-	-
Major equipment purchases	12,270.64		-	12,270.64
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	25,014.59		-	25,014.59
Miscellaneous	67,309.47			67,309.47
Total (To Section 2, Line 5)	\$ 104,594.70	\$	-	\$ 104,594.70

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND 2022 FORM MS-965 – SECTION 2 WITH ADJUSTMENTS

Fund Balance	Reported		Adjustments		Adjusted Amount	
1. Balance, January 1, 2022	\$	7,494.85	\$	-	\$	7,494.85
Receipts:						
2. State allocation		88,479.26		-		88,479.26
2a. Turnback allocation		5,000.00		-		5,000.00
2b. Interest on investments		18.18		-		18.18
2c. Miscellaneous		60,266.76				60,266.76
3. Total receipts		153,764.20				153,764.20
4. Total funds available		161,259.05				161,259.05
5. Expenditures (Section 1)		104,594.70				104,594.70
6. Balance, December 31, 2022	\$	56,664.35	\$		\$	56,664.35

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND 2022 FORM MS-965 – SECTION 3 WITH ADJUSTMENTS

Equipment Balance]	Reported	Adju	stments	 Adjusted Amount
1. Prior year equipment balance	\$	7,494.85	\$	-	\$ 7,494.85
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)		18,695.85		-	18,695.85
3. PENNDOT approved adjustments					
4. Total funds available for equipment acquisition		26,190.70		-	26,190.70
5. Less: Major equipment expenditures		12,270.64			 12,270.64
6. Remainder		13,920.06			 13,920.06
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	\$	13,920.06	\$	<u>-</u>	\$ 13,920.06

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND AUDITOR DESCRIPTION OF SELECT TRANSACTIONS FOR THE PERIOD JANUARY 1, 2021 TO DECEMBER 31, 2022

The following information relates to certain types of transactions for which the Pennsylvania Department of Transportation requested that we provide additional detail:

Miscellaneous Receipts

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

Source	Description	2022
Commonwealth of Pennsylvania Financial institution Financial institution	Winter maintenance agreement Correction of transfer in error Refund for bank service charges	\$ 5,000.00 55,231.76 35.00
Totals		\$60,266.76

Miscellaneous Expenditures

The following miscellaneous expenditures were paid from the Liquid Fuels Tax Fund during the examination period:

Source	Description	2022
Financial institution Financial institution Financial institution	Duplicate payments (Finding) Transfer in error Bank service charge	\$10,916.10 56,323.37 70.00
Totals		\$67,309.47

Transfer In Error

On March 15, 2022, the municipality transferred \$56,323.37 from its Liquid Fuels Tax Fund to a financial institution for the balance of a road project loan in error. On March 21, 2022, the financial institution reversed the transfer, less the loan installment amount of \$1,091.61, in the amount of \$55,231.76 to the municipality's Liquid Fuels Tax Fund to correct the transfer in error.

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND AUDITOR DESCRIPTION OF SELECT TRANSACTIONS FOR THE PERIOD JANUARY 1, 2021 TO DECEMBER 31, 2022

Bank Loan

On September 24, 2020, the municipality borrowed \$35,000.00 from Commercial Bank and Trust to purchase a 2020 Ford F-350XL Cab pickup with additional parts. The term of the loan was for 34 months at an interest rate of 3.50 percent. Principal and interest payments of \$3,067.66 are due quarterly. Prior years' principal and interest payments from the Liquid Fuels Tax Fund were \$2,962.17 and \$105.49, respectively.

During the current examination period, the municipality paid principal of \$22,993.61 and interest of \$1,547.67 from the Liquid Fuels Tax Fund. These amounts are reflected in major equipment purchases on the 2021and 2022 Forms MS-965 - Section 1. The outstanding balance of the loan as of December 31, 2022, was \$9,044.22, plus interest.

Bank Loan

On October 19, 2021, the municipality borrowed \$60,000.00 from Commercial Bank and Trust to partially fund the 2021 road paving Project No. 21-64433-001. The term of the loan was for 60 months at an interest rate of 3.50 percent. Principal and interest payments of \$1,091.61 are due monthly.

During the current examination period, the municipality paid principal of \$9,396.00 and interest of \$1,520.10 from the Liquid Fuels Tax Fund (see Finding). These amounts are reflected in major equipment purchases on the 2022 Form MS-965 - Section 1. Additionally, the municipality paid principal of \$3,676.63 and interest of \$689.81 from the General Fund. The outstanding balance of the loan as of December 31, 2022, was \$46,927.37, plus interest.

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND FINDING AND RECOMMENDATION FOR THE PERIOD JANUARY 1, 2021 TO DECEMBER 31, 2022

Finding – Improper Loan Payments Made From Liquid Fuels Tax Fund

Our examination disclosed the municipality expended \$136,672.53 during 2021 and \$25,014.59 during 2022 from its Liquid Fuels Tax Fund to pay a contractor for Project No. 21-64433-001, which was the total cost of the project. In October 2021, the municipality borrowed \$60,000.00 from Commercial Bank and Trust to partially pay for the project but deposited the loan proceeds of the loan into the General Fund. During 2021, loan payments were correctly paid from the General Fund. During 2022, however, loan payments of \$10,916.10 were paid from the Liquid Fuels Tax Fund. Additionally, the municipality made a loan payment of \$1,091.61 from its Liquid Fuels Tax Fund on January 19, 2023, which was subsequent to our examination period. Since the loan proceeds were deposited in the General Fund and all payments to the contractor for the project were made from the Liquid Fuels Tax Fund, loan payments are not permitted to be made from the Liquid Fuels Tax Fund. The municipality reimbursed the Liquid Fuels Tax Fund \$10,916.10 on February 8, 2023, and \$1,091.62 on March 29, 2023, which was subsequent to the end of our examination period and \$.01 more than the amount paid.

Although the money was reimbursed to the Liquid Fuels Tax Fund, the primary concern is the inadequate internal controls which enabled the payments of \$12,007.71 to be made from the wrong fund and the error to remain undetected until 2023.

The municipality attributed the improper loan payments made from the Liquid Fuels Tax Fund to turnover in the secretary/treasurer position.

Recommendation

We recommend that the municipality refrain from expending funds from the Liquid Fuels Tax Fund that were not used for permissible Liquid Fuels Tax Fund purposes.

Management's Response

The municipal officials stated:

Duplicate payment for road project was due to new secretary, clerical error. This amount was reimbursed.

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND FINDING AND RECOMMENDATION FOR THE PERIOD JANUARY 1, 2021 TO DECEMBER 31, 2022

Finding – Improper Loan Payments Made From Liquid Fuels Tax Fund (Continued)

Auditor's Conclusion

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

BOROUGH OF WEST NEWTON WESTMORELAND COUNTY LIQUID FUELS TAX FUND SUMMARY OF ONSITE CLOSEOUT MEETING FOR THE PERIOD JANUARY 1, 2021 TO DECEMBER 31, 2022

An onsite closeout meeting was held August 10, 2023. Those participating were:

BOROUGH OF WEST NEWTON

The Honorable Brenda Maleski, President of Council

Ms. Ashley Pergola, Secretary/Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Mrs. Michele Simpson, Auditor

This report was initially distributed to:

The Honorable Michael Carroll

Secretary
Department of Transportation

Borough of West Newton

Westmoreland County 112 South Water Street West Newton, PA 15089

The Honorable Mary PopovichMayor

The Honorable Brenda Maleski

President of Council

Ms. Ashley Pergola 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.