

ATTESTATION ENGAGEMENT

Borough of Brownsville

Fayette County, Pennsylvania

26-402

Liquid Fuels Tax Fund

For the Period

January 1, 2020 to December 31, 2020

December 2021



Commonwealth of Pennsylvania
Department of the Auditor General

Timothy L. DeFoor • Auditor General



Commonwealth of Pennsylvania
Department of the Auditor General
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TIMOTHY L. DEFOOR
AUDITOR GENERAL

Independent Auditor's Report

The Honorable Yassmin Gramian, P.E.
Secretary
Department of Transportation
Harrisburg, PA 17120

We examined the accompanying Form MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Borough of Brownsville, Fayette County, for the period January 1, 2020 to December 31, 2020. The municipality's management is responsible for presenting the Form MS-965 in accordance with the criteria described in the Background section of this report and the Department of Transportation's *Publication 9*. Our responsibility is to express an opinion on the Form MS-965 With Adjustments based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Form MS-965 is presented in accordance with the criteria described above, in all material respects. An examination involves performing procedures to obtain evidence about the Form MS-965. The nature, timing and extent of the procedures selected depend on our judgement, including an assessment of the risks of material misstatement of the Form MS-965, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

As described in the Auditor Description Of Select Transactions section of this report, the adjustments included on the Form MS-965 With Adjustments are made by the Department of the Auditor General.

As discussed in Finding No. 1, the borough expended \$34,267.00 from the Liquid Fuels Tax Fund for road repairs and catch basin replacement without advertising for bids. Additionally, as discussed in Finding No. 2, the borough expended \$19,592.00, which was also included in Finding No. 1, for failing to file an application with the Department of Transportation for a catch basin and pipe replacement project.

Independent Auditor's Report (Continued)

As discussed in the Summary Of Prior Examination Recommendations section of this report, the Department of Transportation directed the municipality to reimburse the Liquid Fuels Tax Fund \$18,349.92 in relation to a prior examination finding for nonpermissible expenditures. As of the exit conference date of this examination of August 10, 2021, reimbursement has not been made.

In our opinion, except for the matters discussed in the preceding paragraphs, 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 Borough of Brownsville, Fayette County, for the period January 1, 2020 to December 31, 2020, in accordance with the criteria described in the Background section of this report and the Department of Transportation's *Publication 9*.

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

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

Our consideration of internal control over reporting on the Form MS-965 was for the limited purpose of expressing an opinion on whether the Form MS-965 is presented in accordance with the criteria described above and would not necessarily identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our engagement we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

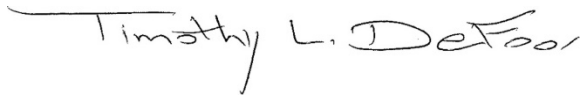
Independent Auditor's Report (Continued)

As part of obtaining reasonable assurance about whether the Form MS-965 is free from material misstatement, we performed tests of the Borough of Brownsville, Fayette 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 the following instances of noncompliance that are required to be reported under *Government Auditing Standards*:

- Noncompliance With Advertising And Bidding Requirements.
- Failure To Obtain Project Approval.

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 Brownsville, Fayette 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
Auditor General
November 17, 2021

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BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Background

The Liquid Fuels Tax Municipal Allocation Law, Act 655 of 1956, as amended, (72 P.S. § 2615.5 et seq.), provides municipalities other than counties (townships, boroughs, cities, towns, home rule, and optional plan governments) with an annual allocation of liquid fuels taxes from the state's Motor License Fund to be used for the maintenance and repair of streets, roads, and bridges for which the municipality is responsible. The allocation of these funds to municipalities is based: (1) 50 percent on the municipality's proportion of local road mileage to the total local road mileage in the state, and (2) 50 percent on the proportion of a municipality's population to the total population in the state.

The Vehicle Code, Title 75 P.S. § 9511, provides municipalities with annual maintenance payments to be received from the Motor License Fund for functionally local highways that were transferred to a municipality from the Commonwealth of Pennsylvania.

Each municipality must deposit the allocation of Liquid Fuels Tax funds and annual maintenance payments that it receives into a special fund called either the Municipal Liquid Fuels Tax Fund or State Fund. A municipality may not deposit any other monies into this fund except when the municipality does not have enough money in the special fund to meet the payments called for by its current annual budget for road and bridge purposes. In such a case, the municipality may borrow money or transfer money from its General Fund to its Liquid Fuels Tax Fund.

The Department of Transportation has been given the regulatory authority for the administration of these funds. Department of Transportation's *Publication 9* includes the policies and procedures for the administration of Act 655, as amended, and the Liquid Fuels Tax Fund money. However, if there is a difference between *Publication 9* and any legislation, the legislation shall govern.

To qualify for the annual allocation of Liquid Fuels Tax funds, *Publication 9* indicates that each municipality shall:

1. Submit annual reports (MS-965, Actual Use Report, MS-965P, Project and Miscellaneous Receipts, and MS-965S, Record of Checks).
2. Make deposits and payments or expenditures in compliance with Act 655 of 1956, as amended. Failure to do so may result in not receiving allocations from PennDOT until all discrepancies are resolved. *Publication 9*, Section 2.6, includes information about investing Liquid Fuels Tax monies, using loan or bond proceeds, and types of receipts into the Liquid Fuels Tax Fund.

BOROUGH OF BROWNSVILLE
 FAYETTE COUNTY
 LIQUID FUELS TAX FUND
 BACKGROUND
 FOR THE PERIOD
 JANUARY 1, 2020 TO DECEMBER 31, 2020

Background (Continued)

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

Criteria

The criteria for the Form MS-965 With Adjustment are described below.

Section 1 of Form MS-965 With Adjustments provides a summary of Liquid Fuels Tax Fund expenditures by category. Categories requiring explanation include:

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

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

- Minor equipment purchases are purchases of road machinery and road equipment with varying yearly costs that are less than or equal to the amounts indicated below:

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

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

BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Background (Continued)

Section 2 of Form MS-965 With Adjustments provides information on the fund balance. Categories requiring explanation include:

- The state allocation is available from the Department of Transportation in March of each year. The amount the municipality receives is based half on its population and half on its road mileage.
- Municipalities that transferred roads from the Commonwealth of Pennsylvania to the municipality through the Highway Transfer Program receive annual turnback allocations in March of each year from the Department of Transportation. Turnback allocations are based on the mileage of the roads transferred.
- Expenditures include the total transferred from Section 1.

Section 3 of Form MS-965 With Adjustments determines if the municipality expended Liquid Fuels Tax Fund money in excess of the permissible amount for equipment and the balance that the municipality may carry forward for the purchase of equipment to the subsequent year.

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

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

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

BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Background (Continued)

Basis of Presentation

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

Basis Of Accounting

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

General Fixed Assets

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

BOROUGH OF BROWNSVILLE
 FAYETTE COUNTY
 LIQUID FUELS TAX FUND
 2020 FORM MS-965 – SECTION 1
 WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Minor equipment purchases	\$ -	\$ -	\$ -
Computer/Computer related training	-	-	-
Major equipment purchases	14,720.79	-	14,720.79
Agility projects	-	-	-
Cleaning streets and gutters	2,754.00	-	2,754.00
Winter maintenance services	14,920.84	-	14,920.84
Traffic control devices	3,016.49	-	3,016.49
Street lighting	-	-	-
Storm sewers and drains	32,454.50	-	32,454.50
Repairs of tools and machinery	3,898.39	-	3,898.39
Maintenance and repair of roads and bridges	47,299.89	-	47,299.89
Highway construction and rebuilding projects	-	-	-
Miscellaneous	-	-	-
 Total (To Section 2, Line 5)	 <u>\$ 119,064.90</u>	 <u>\$ -</u>	 <u>\$ 119,064.90</u>

BOROUGH OF BROWNSVILLE
 FAYETTE COUNTY
 LIQUID FUELS TAX FUND
 2020 FORM MS-965 – SECTION 2
 WITH ADJUSTMENTS

<u>Fund Balance</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
1. Balance, January 1, 2020	\$ 41,575.40	\$ -	\$ 41,575.40
Receipts:			
2. State allocation	100,577.45	-	100,577.45
2a. Turnback allocation	5,520.00	-	5,520.00
2b. Interest on investments	403.82	-	403.82
2c. Miscellaneous	14,675.00	(14,675.00)	-
3. Total receipts	<u>121,176.27</u>	<u>(14,675.00)</u>	<u>106,501.27</u>
4. Total funds available	<u>162,751.67</u>	<u>(14,675.00)</u>	<u>148,076.67</u>
5. Expenditures (Section 1)	<u>119,064.90</u>	<u>-</u>	<u>119,064.90</u>
6. Balance, December 31, 2020	<u><u>\$ 43,686.77</u></u>	<u><u>\$ (14,675.00)</u></u>	<u><u>\$ 29,011.77</u></u>

BOROUGH OF BROWNSVILLE
 FAYETTE COUNTY
 LIQUID FUELS TAX FUND
 2020 FORM MS-965 – SECTION 3
 WITH ADJUSTMENTS

<u>Equipment Balance</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
1. Prior year equipment balance	\$ 41,575.40	\$ -	\$ 41,575.40
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	21,219.49	-	21,219.49
3. PENNDOT approved adjustments	<u>-</u>	<u>-</u>	<u>-</u>
4. Total funds available for equipment acquisition	62,794.89	-	62,794.89
5. Less: Major equipment expenditures	<u>14,720.79</u>	<u>-</u>	<u>14,720.79</u>
6. Remainder	<u>48,074.10</u>	<u>-</u>	<u>48,074.10</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 43,686.77</u>	<u>\$ (14,675.00)</u>	<u>\$ 29,011.77</u>

BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
AUDITOR DESCRIPTION OF SELECT TRANSACTIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

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

Adjustments

Section 2

An adjustment of \$(14,675.00) was made to “Miscellaneous” because there were no miscellaneous receipts.

Lease-Purchase Agreement

On August 28, 2018, the municipality entered into a lease-purchase agreement with Laurel Mountain Leasing to purchase a 2019 Ford F-550 for \$63,749.00. The agreement was for a term of five years at an interest rate of 5.40 percent. Principal and interest payments of \$14,720.79 are due annually. Prior years’ payments from the Liquid Fuels Tax Fund were \$12,503.09 in principal, \$2,217.70 in interest, and \$400.00 in documentation fees.

During the current examination period, the municipality paid principal of \$11,749.55 and interest of \$2,971.24 from the Liquid Fuels Tax Fund. These amounts are reflected in major equipment purchases on the 2020 Form MS-965 - Section 1. The outstanding balance of the lease-purchase agreement as of December 31, 2020, was \$39,496.36, plus interest.

BOROUGH OF BROWNSVILLE
 FAYETTE COUNTY
 LIQUID FUELS TAX FUND
 FINDINGS AND RECOMMENDATIONS
 FOR THE PERIOD
 JANUARY 1, 2020 TO DECEMBER 31, 2020

Finding No. 1 - Noncompliance With Advertising And Bidding Requirements

Our examination disclosed that the borough expended \$34,267.00 during 2020 from the Liquid Fuels Tax Fund for road paving and catch basin replacement without advertising for bids. These expenditures were as follows:

<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Check Number</u>	<u>Check Date</u>	<u>Amount</u>
453	09/09/20	1011	10/05/21	\$19,592.00
456	09/16/20	1013	10/05/21	14,675.00
Total				<u><u>\$34,267.00</u></u>

The above expenditures were not made in compliance with the advertising, bidding, and contract requirements of *The Borough Code*, 53 P.S. § 46402(a), (also found at § 1402(a) of *The Borough Code* as published by the Local Government Commission), which requires that purchases made over \$18,500.00 during 2012 must be advertised, bid, and awarded by contract. The bidding threshold increased to purchases over \$21,000.00 for 2020 and \$21,300.00 for 2021. *The Borough Code*, 53 P.S. § 46403(a), (also found at § 1403(a) of *The Borough Code* as published by the Local Government Commission) further states that advertising, bidding and contract requirements should not be evaded through piecemeal purchases.

This condition occurred because the borough officials were not aware of the advertising and bidding requirements.

The failure to comply with *The Borough Code* could result in the borough having to reimburse \$34,267.00 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the borough reimburse \$34,267.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the borough complies with *The Borough Code* as noted in this finding.

BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Finding No. 1 - Noncompliance With Advertising And Bidding Requirements (Continued)

Management's Response

The borough officials stated:

Moving forward, the municipality will obtain proper bidding.

Auditor's Conclusion

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

BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Finding No. 2 - Failure To Obtain Project Approval

Our examination disclosed that the municipality expended \$19,592.00 for catch basin repairs, which included pipe replacement with a larger size. However, the municipality did not file an application with the Department of Transportation for the project and failed to submit specifications for approval.

The Department of Transportation's *Publication 9* contains the policies and procedures for the administration of the Liquid Fuels Tax Fund. *Publication 9*, Chapter Two, Section 2.7.2, states that nonpermissible expenditures include "Construction and reconstruction projects without prior PENNDOT approval."

Additionally, *Publication 9*, Chapter Two, Section 2.8, states, in part:

The following criteria is used to determine when a project is required for work on local roads utilizing Liquid Fuels Tax Funds, when construction, reconstruction and/or resurfacing work exceeds one inch or more in depth as well as other activities.

Pipe	New installation location or replacement with a larger size
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This condition occurred because the municipal officials were not aware that project approval was required.

The failure to comply with the Department of Transportation's *Publication 9* could result in the municipality having to reimburse \$19,592.00 to its Liquid Fuels Tax Fund. We further noted that this amount is included in the Finding No. 1 reimbursement request.

Recommendation

We recommend that the borough reimburse \$19,592.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation unless reimbursement is included within reimbursement as a result of Finding No. 1

We also recommend that before the municipality expends money on a project, it applies for and obtains prior approval for the project, and when the project is completed, it obtains approval of the completed work.

BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Finding No. 2 - Failure To Obtain Project Approval (Continued)

Management's Response

The municipal officials stated:

Moving forward, the municipality will obtain project approval.

Auditor's Conclusion

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

BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF PRIOR EXAMINATION RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

Summary Of Prior Examination Recommendations

In our prior report, we recommended that the Department of Transportation review our examination finding to determine if the municipality should reimburse \$18,349.92 to its Liquid Fuels Tax Fund for nonpermissible expenditures.

During our current examination, we reviewed a letter dated April 1, 2021, from the Department of Transportation directing the municipality to reimburse \$18,349.92 to its Liquid Fuels Tax Fund. As of the exit conference date of this examination of August 10, 2021, the municipality had not reimbursed this amount to its Liquid Fuels Tax Fund.

In our prior report, we also recommended that the municipality comply with the Liquid Fuels Tax Municipal Allocation Law regarding permissible expenditures.

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

BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF EXIT CONFERENCE
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

An exit conference was held August 10, 2021. Those participating were:

BOROUGH OF BROWNSVILLE

The Honorable Tracey Sheehan Zivkovich, President of Council

The Honorable Paul Synuria, Vice-President of Council

Ms. Melissa S. O'Brien, Secretary/Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Mrs. Michele Simpson, Auditor

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

BOROUGH OF BROWNSVILLE
FAYETTE COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2020

This report was initially distributed to:

The Honorable Yassmin Gramian, P.E.
Secretary
Department of Transportation

Borough of Brownsville
Fayette County
200 Second Street
Brownsville, PA 15417

The Honorable Tracey Sheehan Zivkovich
President of Council

The Honorable Paul Synuria
Vice-President of Council

Ms. Melissa S. O'Brien
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.