ATTESTATION ENGAGEMENT

Township of Middle Smithfield

Monroe County, Pennsylvania 45-207

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

June 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 Form MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Township of Middle Smithfield, Monroe County, for the period January 1, 2022 to December 31, 2022. 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. An examination involves performing procedures 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 required to be independent and to meet our other ethical responsibilities in accordance with ethical requirements relating to the engagement.

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 Township of Middle Smithfield, Monroe County, for the period January 1, 2022 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*.

Independent Auditor's Report (Continued)

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 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. 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. We did identify a certain deficiency in internal control, described in the findings listed below, that we consider to be a significant deficiency in internal control:

Vendor Overcharges.

As part of obtaining reasonable assurance about whether the Form MS-965 is free from material misstatement, we performed tests of the Township of Middle Smithfield, Monroe 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*. However, we did note a matter that, while not required to be included in this report by *Government Auditing Standards*, has been included in the finding below:

• Purchase Made From Vendor That Was Not Awarded The Contract.

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

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 Township of Middle Smithfield, Monroe 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

April 30, 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
\$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 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.

TOWNSHIP OF MIDDLE SMITHFIELD MONROE COUNTY LIQUID FUELS TAX FUND 2022 FORM MS-965 – SECTION 1 WITH ADJUSTMENTS

Expenditure Summary	Reported		Adjustments		Adjusted Amount	
Minor equipment purchases	\$	-	\$	-	\$	-
Computer/Computer related training		-		-		-
Major equipment purchases		-		-		-
Agility projects		-		-		-
Cleaning streets and gutters		-		-		-
Winter maintenance services	108,297.79 -			-		108,297.79
Traffic control devices				-		-
Street lighting		-		-		-
Storm sewers and drains		-		-		-
Repairs of tools and machinery		-		-		-
Maintenance and repair of						
roads and bridges		176,604.63		-		176,604.63
Highway construction and						
rebuilding projects		342,067.01		-		342,067.01
Miscellaneous		21,450.07				21,450.07
Total (To Section 2, Line 5)	\$	648,419.50	\$	-	\$	648,419.50

TOWNSHIP OF MIDDLE SMITHFIELD MONROE COUNTY LIQUID FUELS TAX FUND 2022 FORM MS-965 – SECTION 2 WITH ADJUSTMENTS

Fund Balance	Reported		Adjustments		Adjusted Amount	
1. Balance, January 1, 2022	\$ 325,109.63		\$ -		\$	325,109.63
Receipts:						
2. State allocation		510,130.12		-		510,130.12
2a. Turnback allocation		7,160.00		-		7,160.00
2b. Interest on investments		371.62		-		371.62
2c. Miscellaneous		25,334.27				25,334.27
3. Total receipts		542,996.01				542,996.01
4. Total funds available		868,105.64				868,105.64
5. Expenditures (Section 1)		648,419.50				648,419.50
6. Balance, December 31, 2022	\$	219,686.14	\$		\$	219,686.14

TOWNSHIP OF MIDDLE SMITHFIELD MONROE COUNTY LIQUID FUELS TAX FUND 2022 FORM MS-965 – SECTION 3 WITH ADJUSTMENTS

Equipment Balance	Reported	Reported Adjustments	
1. Prior year equipment balance	\$ 249,690.09	\$ -	\$ 249,690.09
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	103,458.02	-	103,458.02
3. PENNDOT approved adjustments			
4. Total funds available for equipment acquisition	353,148.11	-	353,148.11
5. Less: Major equipment expenditures			
6. Remainder	353,148.11		353,148.11
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	\$ 219,686.14	\$ -	\$ 219,686.14

TOWNSHIP OF MIDDLE SMITHFIELD MONROE COUNTY LIQUID FUELS TAX FUND AUDITOR DESCRIPTION OF SELECT TRANSACTIONS FOR THE PERIOD JANUARY 1, 2022 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	Amount
General Fund	Reimbursement (Summary Of 2019- 2020 Examination Recommendation)	\$ 3,914.20
Commonwealth of Pennsylvania	Deposit in error	21,420.07
Total		\$25,334.27

Miscellaneous Expenditures

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

Payee	Description	Amount
Financial institution General Fund	Bank service charge Correction of deposit in error	\$ 30.00 21,420.07
Total		\$21,450.07

Deposit In Error

On November 14, 2022, the municipality deposited \$21,420.07 into its Liquid Fuels Tax Fund in error. On November 17, 2022, the municipality transferred this amount from its Liquid Fuels Tax Fund to its General Fund to correct the deposit in error.

Finding No. 1 - Vendor Overcharges

Our examination disclosed that the municipality was overcharged a total of \$16,895.51 during 2022 for the purchase of 9.5MM and 19MM asphalt as follows:

Product	Quantity Purchased	Contract Price	Invoice Price	Unit Price Difference	Total Price Difference
9.5MM	1,353.30 Tons	\$71.41	\$75.38	\$3.97	\$ 5,372.60
9.5MM	2,810.05 Tons	71.41	75.28	3.87	10,874.89
9.5MM	286.89 Tons	71.41	73.29	1.88	539.35
19MM	71.97 Tons	63.56	65.07	1.51	108.67
			Amount	overpaid	\$16,895.51

Good internal controls ensure that invoice prices are compared to contract prices before payments are made on vendor invoices. The failure to follow this procedure increases the possibility that overpayments can be made on vendor invoices and go undetected for long periods of time.

This occurred because when the township received the invoices, they did not compare the unit price to the contract price.

Recommendations

We recommend that the municipality reimburse \$16,895.51 to its Liquid Fuels Tax Fund upon official notification of the Department of Transportation. We also recommend that the municipal officials contact the vendor as soon as possible to obtain reimbursement.

We further recommend that the municipality compare invoice prices to contract prices prior to making payments on vendor invoices.

Finding No. 1 - Vendor Overcharges (Continued)

Management's Response

The Finance Director stated:

We did not realize the contracted vendor had put a different unit price on their invoices that was not the actual contracted price. The invoices were inadvertently paid at a higher rate. This was an oversight and we have put into place the following checks and balances to avoid this from occurring in the future. The Public Works Admin will have a list of all the contracted pricing to verify the cost listed on each invoice for accuracy. If in fact there is a discrepancy, she will contact the vendor to have the invoice modified and reissued with the correct price. The corrected invoice will then be sent with the PO to the accounts payable department to be paid. I will be contacting the vendor for a refund of the overage they charged in 2022.

Auditor's Conclusion

We will determine if the municipality complied with our recommendations during our next examination.

Finding No. 2 - Purchase Made From Vendor That Was Not Awarded The Contract

Our examination disclosed that during 2022 the township expended in excess of \$21,900.00 for salt, which required it to advertise for bids for the salt. In lieu of advertising for bids for salt on its own, the township is a member of a Council of Governments that bids for materials in bulk for multiple municipalities. However, on February 10, 2022, the township expended \$8,577.03 from the Liquid Fuels Tax Fund for the purchase of salt from Vendor #1. However, the Council of Governments awarded the contract to the lowest bidder, which was Vendor #2.

The above expenditure was not made in compliance with the advertising, bidding, and contract requirements of *The Second Class Township Code*, 53 P.S. § 68102(a), (also found at § 3102(a) of *The Second Class Township Code* as published by the Local Government Commission), which requires that purchases over \$18,500.00 during 2012 must be advertised, bid, and awarded by contract. The bidding threshold increased to purchases over \$21,900.00 for 2022, \$22,500.00 for 2023, and \$23,200.00 for 2024. *The Second Class Township Code*, 53 P.S. § 68104(a), (also found at § 3104(a) of *The Second Class Township 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 township placed an order after the contract expired with the vendor from the prior year. Vendor #1 was not awarded the contract for 2022. The contract expired on December 31, 2021, but the invoice date was listed as January 12, 2022.

The failure to comply with *The Second Class Township Code* could result in the township having to reimburse \$8,577.03 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the municipality reimburse \$8,577.03 to its Liquid Fuels Tax Fund upon official notification of the Department of Transportation

We further recommend that the township comply with *The Second Class Township Code* as noted in this finding.

Finding No. 2 - Purchase Made From Vendor That Was Not Awarded The Contract (Continued)

Management's Response

The Finance Director stated:

[Vendor #1] was the contracted vendor for salt for the 2021 year. The Roadmaster made a purchase of salt from [Vendor #1] on 12/28/21. He made another order/purchase on 1/12/22 (2 weeks later) not realizing it was a new fiscal year when he made the purchase. The 2022 contract was awarded to [Vendor #2] and this purchase should have been made through them. This was an oversight.

Auditor's Conclusion

We will determine if the municipality complied with our recommendations during the next examination.

TOWNSHIP OF MIDDLE SMITHFIELD MONROE COUNTY LIQUID FUELS TAX FUND SUMMARY OF 2019-2020 EXAMINATION RECOMMENDATION FOR THE PERIOD JANUARY 1, 2022 TO DECEMBER 31, 2022

Summary Of 2019-2020 Examination Recommendation

In our 2019-2020 report, we recommended that the Department of Transportation review our examination finding to determine if the municipality should reimburse \$3,914.20 to its Liquid Fuels Tax Fund for Liquid Fuels money over expended on a project.

During our prior examination, we reviewed a letter dated June 6, 2022, from the Department of Transportation directing the municipality to reimburse \$3,914.20 to its Liquid Fuels Tax Fund. We noted that the municipality reimbursed this amount to its Liquid Fuels Tax Fund on February 15, 2022.

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

TOWNSHIP OF MIDDLE SMITHFIELD MONROE COUNTY LIQUID FUELS TAX FUND SUMMARY OF ONSITE CLOSEOUT MEETING FOR THE PERIOD JANUARY 1, 2022 TO DECEMBER 31, 2022

An onsite closeout meeting was held January 22, 2024. Those participating were:

TOWNSHIP OF MIDDLE SMITHFIELD

Ms. Bonnie Winters, Finance Director

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Corey Tomasetti, Auditor

This report was initially distributed to:

The Honorable Michael Carroll

Secretary Department of Transportation

Township of Middle Smithfield

Monroe County 147 Municipal Drive East Stroudsburg, PA 18302

The Honorable Annette Atkinson

Chairwoman of the Board of Supervisors

Ms. Bonnie Winters

Finance Director

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.