

ATTESTATION ENGAGEMENT

Township of Tulpehocken

Berks County, Pennsylvania

06-239

Liquid Fuels Tax Fund

For the Period

January 1, 2020 to December 31, 2022

July 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 Township of Tulpehocken, Berks County, for the period January 1, 2020 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. Those standards require that we plan and perform the examination 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 qualified opinion.

We are required to be independent and to meet our other ethical responsibilities in accordance with ethical requirements relating to the engagement.

This report is a revised report, previously dated April 30, 2024, and is revised because the township solicitor provided an updated response and cause for the finding included in this report.

As discussed in the Finding and Recommendations section of this report, the municipality expended \$121,795.84 from its Liquid Fuels Tax Fund during 2022 for a related party transaction.

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 Township of Tulpehocken, Berks County, for the period January 1, 2020 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; 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 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 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 over reporting on the Forms MS-965 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 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.

As part of obtaining reasonable assurance about whether the Forms MS-965 are free from material misstatement, we performed tests of the Township of Tulpehocken, Berks 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 the following instance of noncompliance that is required to be reported under *Government Auditing Standards*:

- Related Party Transaction.

Independent Auditor's Report (Continued)

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 Tulpehocken, Berks 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.

A handwritten signature in black ink that reads "Timothy L. DeFoor". The signature is written in a cursive style with a long horizontal line extending to the left of the first letter.

Timothy L. DeFoor
Auditor General
July 2, 2024

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TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2022

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.

TOWNSHIP OF TULPEHOCKEN
 BERKS COUNTY
 LIQUID FUELS TAX FUND
 BACKGROUND
 FOR THE PERIOD
 JANUARY 1, 2020 TO DECEMBER 31, 2022

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.

TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2022

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.

TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY
LIQUID FUELS TAX FUND
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2022

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.

TOWNSHIP OF TULPEHOCKEN
 BERKS 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	38,871.58	-	38,871.58
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	151,127.19	-	151,127.19
Highway construction and rebuilding projects	-	-	-
Miscellaneous	-	-	-
 Total (To Section 2, Line 5)	 <u>\$ 189,998.77</u>	 <u>\$ -</u>	 <u>\$ 189,998.77</u>

TOWNSHIP OF TULPEHOCKEN
 BERKS 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	\$ 22,071.38	\$ -	\$ 22,071.38
Receipts:			
2. State allocation	182,151.38	-	182,151.38
2a. Turnback allocation	26,320.00	-	26,320.00
2b. Interest on investments	798.06	-	798.06
2c. Miscellaneous	-	-	-
3. Total receipts	<u>209,269.44</u>	<u>-</u>	<u>209,269.44</u>
4. Total funds available	<u>231,340.82</u>	<u>-</u>	<u>231,340.82</u>
5. Expenditures (Section 1)	<u>189,998.77</u>	<u>-</u>	<u>189,998.77</u>
6. Balance, December 31, 2020	<u><u>\$ 41,342.05</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 41,342.05</u></u>

TOWNSHIP OF TULPEHOCKEN
 BERKS 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	\$ 22,071.38	\$ -	\$ 22,071.38
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	41,694.28	-	41,694.28
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	63,765.66	-	63,765.66
5. Less: Major equipment expenditures	38,871.58	-	38,871.58
6. Remainder	<u>24,894.08</u>	<u>-</u>	<u>24,894.08</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 24,894.08</u>	<u>\$ -</u>	<u>\$ 24,894.08</u>

TOWNSHIP OF TULPEHOCKEN
 BERKS COUNTY
 LIQUID FUELS TAX FUND
 2021 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	50,262.15	-	50,262.15
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	16,292.24	-	16,292.24
Traffic control devices	-	-	-
Street lighting	-	-	-
Storm sewers and drains	-	-	-
Repairs of tools and machinery	-	-	-
Maintenance and repair of roads and bridges	141,715.00	-	141,715.00
Highway construction and rebuilding projects	-	-	-
Miscellaneous	-	-	-
 Total (To Section 2, Line 5)	 <u>\$ 208,269.39</u>	 <u>\$ -</u>	 <u>\$ 208,269.39</u>

TOWNSHIP OF TULPEHOCKEN
 BERKS COUNTY
 LIQUID FUELS TAX FUND
 2021 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, 2021	\$ 41,342.05	\$ -	\$ 41,342.05
Receipts:			
2. State allocation	169,041.88	-	169,041.88
2a. Turnback allocation	26,320.00	-	26,320.00
2b. Interest on investments	45.43	-	45.43
2c. Miscellaneous	-	-	-
3. Total receipts	<u>195,407.31</u>	<u>-</u>	<u>195,407.31</u>
4. Total funds available	<u>236,749.36</u>	<u>-</u>	<u>236,749.36</u>
5. Expenditures (Section 1)	<u>208,269.39</u>	<u>-</u>	<u>208,269.39</u>
6. Balance, December 31, 2021	<u><u>\$ 28,479.97</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 28,479.97</u></u>

TOWNSHIP OF TULPEHOCKEN
 BERKS COUNTY
 LIQUID FUELS TAX FUND
 2021 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	\$ 24,894.08	\$ -	\$ 24,894.08
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	39,072.38	-	39,072.38
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	63,966.46	-	63,966.46
5. Less: Major equipment expenditures	50,262.15	-	50,262.15
6. Remainder	<u>13,704.31</u>	<u>-</u>	<u>13,704.31</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 13,704.31</u>	<u>\$ -</u>	<u>\$ 13,704.31</u>

TOWNSHIP OF TULPEHOCKEN
 BERKS COUNTY
 LIQUID FUELS TAX FUND
 2022 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	52,174.97	-	52,174.97
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	14,669.42	-	14,669.42
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	121,795.84	-	121,795.84
Miscellaneous	-	-	-
 Total (To Section 2, Line 5)	 <u>\$ 188,640.23</u>	 <u>\$ -</u>	 <u>\$ 188,640.23</u>

TOWNSHIP OF TULPEHOCKEN
 BERKS COUNTY
 LIQUID FUELS TAX FUND
 2022 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, 2022	\$ 28,479.97	\$ -	\$ 28,479.97
Receipts:			
2. State allocation	171,413.09	-	171,413.09
2a. Turnback allocation	26,320.00	-	26,320.00
2b. Interest on investments	1,477.43	-	1,477.43
2c. Miscellaneous	-	-	-
3. Total receipts	<u>199,210.52</u>	<u>-</u>	<u>199,210.52</u>
4. Total funds available	<u>227,690.49</u>	<u>-</u>	<u>227,690.49</u>
5. Expenditures (Section 1)	<u>188,640.23</u>	<u>-</u>	<u>188,640.23</u>
6. Balance, December 31, 2022	<u><u>\$ 39,050.26</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 39,050.26</u></u>

TOWNSHIP OF TULPEHOCKEN
 BERKS COUNTY
 LIQUID FUELS TAX FUND
 2022 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	\$ 13,704.31	\$ -	\$ 13,704.31
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	39,546.62	-	39,546.62
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	53,250.93	-	53,250.93
5. Less: Major equipment expenditures	52,174.97	-	52,174.97
6. Remainder	<u>1,075.96</u>	<u>-</u>	<u>1,075.96</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 1,075.96</u>	<u>\$ -</u>	<u>\$ 1,075.96</u>

TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY
LIQUID FUELS TAX FUND
AUDITOR DESCRIPTION OF SELECT TRANSACTIONS
FOR THE PERIOD
JANUARY 1, 2020 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:

Lease-Purchase Agreement

On March 19, 2021, the municipality entered into a lease-purchase agreement with John Deere Finance to purchase a John Deere Wheel Loader for \$150,418.00. The agreement was for a term of three years at an interest rate of 2.75 percent. Principal and interest payments of \$50,253.81 are due the first year, and principal and interest payments of \$52,183.31 are due each following year.

During the current examination period, the municipality paid principal of \$99,647.62 and interest of \$2,789.50 from the Liquid Fuels Tax Fund. These amounts are reflected in major equipment purchases on the 2021 and 2022 Forms MS-965 - Section 1. The outstanding balance of the lease-purchase agreement as of December 31, 2022 was \$50,770.38, plus interest.

TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2022

Finding - Related Party Transaction

Our examination disclosed that the township expended \$121,795.84 on September 14, 2022, from its Liquid Fuels Tax Fund for a paving project. The Chairman of the Board of Supervisors works as a Regional Superintendent for the company awarded the bid and voted to award the bid to the company. Due to the Chairmans’s employment by the company and failure to refrain from voting on the awarding of the contract, this contract appears to violate *The Second Class Township Code* and The Public Official and Employee Ethics Act. Therefore, it should not have been entered into by the township.

The Second Class Township Code, 53 P.S. § 68102(i), as amended, states, in part:

No township official, either elected or appointed, or township employe 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 contract for the sale or furnishing of any supplies or materials for the use of the township or for any work to be done for such township involving the expenditure by the township of more than five hundred dollars (\$500.00) in any year unless the contract is awarded through the public bid process. This limitation does not apply if the officer or appointee of the township is an employe of the person, firm or corporations to which the money is to be paid in a capacity with no possible influence on the transaction and the officer cannot possibly be benefited thereby, either financially or otherwise. If a supervisor is within this exception, the supervisor shall so inform the board of supervisors and refrain from voting on the payments and shall in no manner participate in the contract. . . .

This information is also published in § 3102(i) of *The Second Class Township 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.

TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2022

Finding - Related Party Transaction (Continued)

As further explained in the Management Response section below, the township's solicitor indicated the condition occurred because there were only two seated supervisors at the time, and both supervisors had to vote to approve the contract to avoid negative consequences.

Because this contract appears to violate *The Second Class Township Code* and the Ethics Act the township could be required by the Pennsylvania Department of Transportation to reimburse \$121,795.84 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 township reimburse \$121,795.84 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that the township comply with *The Second Class Township Code* and the Ethics Act.

Management's Response

The township's solicitor stated:

On behalf of the Township, I write to advise that at the time of award of the contract, May 24, 2022, the Township only had two (2) seated supervisors. Tulpehocken Township is governed by a three member Board of Supervisors. A supervisor had resigned effective May 12, 2022 and a new supervisor was not appointed until June 8, 2022, the regular scheduled monthly meeting. The bids had been advertised for opening and awarding at the May 24, 2022 meeting. Additionally, had the contract not been awarded that evening, the Township would have been compelled to pay escalation costs with the successful bidder.

Under Section 603 of the Second Class Township Code, 53 P.S. §65603, a quorum is two (2) members of a three member Board of Supervisors. Further, an affirmative vote of a majority of the entire board of supervisors at a public meeting is necessary to transact any business. Id. As Tulpehocken Township Board of Supervisors is a three member board, the entirety of the board is three members.

TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY
LIQUID FUELS TAX FUND
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2022

Finding - Related Party Transaction (Continued)

The award of the contract was following a public bid pursuant to Section 1103(f) of the Ethics Act, 65 Pa.C.S.A. §1103(f) and Section 3102 of the Second Class Township Code, 53 P.S. 68102. The request for bids was advertised in accordance therewith as evidenced by Proof of Publication from the Reading Eagle, a newspaper of general circulation for Tulpehocken Township. In response, bids were received from three (3) companies. The Chairman's employer was the lowest bidder.

Further Section 1103(j) of the Ethics Act allows for a member of a three member Board of Supervisors to vote to break a tie vote. 65 Pa.C.S. §1103(j).

As a result of only having a two (2) member Board of Supervisors at the time the contract was awarded, as a result of the voluntary resignation of the third member, to act in accordance with Section 603 of the Second Class Township Code and awareness of authority to break a tie vote, the Township had no option but for the conflicted supervisor to come out of his conflict and vote on the award of the contract.

Lastly, the Chairman is in his thirteenth (13th) year as a Supervisor and during the entire time has been employed by a paving contractor. If required, minutes can be provided noting his abstention in voting to award a contract to his employer at prior meetings. As stated previously, due to the circumstances involving only having two (2) supervisors in office on May 24, 2022, Mr. Deck had no other option but to come out of his conflict and vote to award the contract.

In consideration, we write to ask for reconsideration of the finding.

Auditor's Conclusion

The Department of Transportation will determine if the township is required to reimburse \$121,795.84 to its Liquid Fuels Tax Fund. The State Ethics Commission will determine if there was an ethics violation. We will determine whether the municipality complied with our recommendations during our next examination.

TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY
LIQUID FUELS TAX FUND
SUMMARY OF ONSITE CLOSEOUT MEETING
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2022

An onsite closeout meeting was held January 9, 2024. Those participating were:

TOWNSHIP OF TULPEHOCKEN

Ms. Kathy Judy, Secretary/Treasurer

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Evan Betzenberger, Auditor

TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY
LIQUID FUELS TAX FUND
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2020 TO DECEMBER 31, 2022

This report was initially distributed to:

The Honorable Michael Carroll
Secretary
Department of Transportation

Township of Tulpehocken
Berks County
22 Rehrersburg Road
P. O. Box 272
Rehrersburg, PA 19550

The Honorable Gary A. Deck
Chairman of the Board of Supervisors

Ms. Kathy Judy
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.