ATTESTATION ENGAGEMENT

City of Wilkes-Barre

Luzerne County, Pennsylvania 40-304

Liquid Fuels Tax Fund
For the Period
January 1, 2020 to December 31, 2020

May 2022



Commonwealth of Pennsylvania Department of the Auditor General

Timothy L. DeFoor • Auditor General



Commonwealth of Pennsylvania
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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 City of Wilkes-Barre, Luzerne 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.

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

As discussed in the Finding and Recommendations section of this report, during 2020 the city expended \$67,859.00 for paving and \$24,485.20 for line painting from its Liquid Fuels Tax Fund without advertising for bids. Additionally, as discussed in the Summary Of Prior Examination Recommendations, during the prior examination the city expended \$93,932.65 without advertising for bids. This amount was reimbursed to the city's Liquid Fuels Tax Fund on December 27, 2021, which was subsequent to our examination period.

In our opinion, except for the matter discussed in the preceding paragraph, 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 City of Wilkes-Barre, Luzerne 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 City of Wilkes-Barre, Luzerne 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 instance of noncompliance that is required to be reported under *Government Auditing Standards*:

• Noncompliance With Advertising And Bidding Requirements - Recurring.

The examination finding contained in this report cites a condition that existed in the operation of the city during the previous engagement period and was not corrected during the current examination period. The city should strive to comply with the recommendations in this report.

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 City of Wilkes-Barre, Luzerne 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

Timothy L. Detaol

April 11, 2022

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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:

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.

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.

CITY OF WILKES-BARRE LUZERNE COUNTY LIQUID FUELS TAX FUND 2020 FORM MS-965 – SECTION 1 WITH ADJUSTMENTS

Expenditure Summary	Reported	Adjustments	Adjusted Amount	
	Φ.	Ф	Ф	
Minor equipment purchases	\$ -	\$ -	\$ -	
Computer/Computer related training	-	-	-	
Major equipment purchases	222,186.23	-	222,186.23	
Agility projects	-	-	-	
Cleaning streets and gutters	-	-	-	
Winter maintenance services	163,372.25	-	163,372.25	
Traffic control devices	120,260.15	-	120,260.15	
Street lighting	220,000.00	-	220,000.00	
Storm sewers and drains	-	-	-	
Repairs of tools and machinery	-	-	-	
Maintenance and repair of				
roads and bridges	184,794.75	(86,753.40)	98,041.35	
Highway construction and				
rebuilding projects	265,169.80	86,753.40	351,923.20	
Miscellaneous	350.00		350.00	
Total (To Section 2, Line 5)	\$ 1,176,133.18	\$ -	\$ 1,176,133.18	

CITY OF WILKES-BARRE LUZERNE COUNTY LIQUID FUELS TAX FUND 2020 FORM MS-965 – SECTION 2 WITH ADJUSTMENTS

Fund Balance	Reported	Adjustments	Adjusted Amount
1. Balance, January 1, 2020	\$ 687,002.52	\$ -	\$ 687,002.52
Receipts:			
2. State allocation	1,157,370.90	-	1,157,370.90
2a. Turnback allocation	17,120.00	-	17,120.00
2b. Interest on investments	2,542.79	-	2,542.79
2c. Miscellaneous	58,060.62		58,060.62
3. Total receipts	1,235,094.31		1,235,094.31
4. Total funds available	1,922,096.83		1,922,096.83
5. Expenditures (Section 1)	1,176,133.18		1,176,133.18
6. Balance, December 31, 2020	\$ 745,963.65	\$ -	\$ 745,963.65

CITY OF WILKES-BARRE LUZERNE COUNTY LIQUID FUELS TAX FUND 2020 FORM MS-965 – SECTION 3 WITH ADJUSTMENTS

Equipment Balance	 Reported	Adj	ustments	 Adjusted Amount
1. Prior year equipment balance	\$ 325,862.58	\$	-	\$ 325,862.58
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	234,898.18		-	234,898.18
3. PENNDOT approved adjustments	 <u> </u>			 <u>-</u>
4. Total funds available for equipment acquisition	560,760.76		-	560,760.76
5. Less: Major equipment expenditures	 222,186.23			 222,186.23
6. Remainder	 338,574.53			 338,574.53
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	\$ 338,574.53	\$	<u>-</u>	\$ 338,574.53

CITY OF WILKES-BARRE LUZERNE 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 1

Adjustments were made to "Maintenance and repair of roads and bridges" and "Highway construction and rebuilding projects" because expenditures of \$86,753.40 were misclassified.

Miscellaneous Receipts

On October 15, 2020, the municipality deposited \$58,060.62 into its Liquid Fuels Tax Fund that was received from the Commonwealth of Pennsylvania for a winter maintenance agreement.

Miscellaneous Expenditures

On February 4, 2020 and August 19, 2020, the municipality's Liquid Fuels Tax Fund incurred bank service charges of \$100.00 and \$250.00, respectively.

Bank Loan

On February 28, 2011, the city borrowed \$2,090,000.00 from the Pennsylvania Infrastructure Bank for paving projects. The term of the loan was for ten years at an interest rate of 1.63 percent. Principal and interest payments of \$113,643.51 are due semi-annually. Prior years' principal and interest payments from the Liquid Fuels Tax Fund were \$1,755,757.98 and \$178,553.76, respectively.

During the current examination period, the municipality paid principal of \$222,756.87 and interest of \$4,530.15 from the Liquid Fuels Tax Fund. These amounts are reflected in highway construction and rebuilding projects on the 2020 Form MS-965 - Section 1. The outstanding balance of the loan as of December 31, 2020, was \$111,485.15, plus interest.

CITY OF WILKES-BARRE LUZERNE COUNTY LIQUID FUELS TAX FUND AUDITOR DESCRIPTION OF SELECT TRANSACTIONS FOR THE PERIOD JANUARY 1, 2020 TO DECEMBER 31, 2020

Lease-Purchase Agreement

On April 27, 2015, the city entered into a lease-purchase agreement with PNC Equipment Finance to purchase three 2015 Chevrolet Silverado 2500HD trucks for \$102,777.30. The agreement was for a term of five years. Principal and interest payments of \$1,844.49 are due monthly. Prior years' principal and interest payments from the Liquid Fuels Tax Fund were \$93,621.44 and \$7,824.51, respectively.

During the current examination period, the municipality paid principal of \$9,155.86 and interest of \$67.59 from the Liquid Fuels Tax Fund. These amounts are reflected in major equipment purchases on the 2020 Form MS-965 - Section 1. The lease-purchase agreement was paid-in-full on May 5, 2020.

Lease-Purchase Agreement

On December 7, 2017, the city entered into a lease-purchase agreement with PNC Equipment Finance to purchase a 2017 Dodge Ram 5500 dump truck, two 2018 Dodge Ram pickup trucks, and a 2018 Dodge Ram 5500 dump truck for \$222,389.00. The agreement was for a term of five years. Principal and interest payments of \$12,034.11 are due quarterly. Prior years' principal and interest payments from the Liquid Fuels Tax Fund were \$84,910.22 and \$11,362.66, respectively.

During the current examination period, the municipality paid principal of \$44,436.28 and interest of \$3,700.16 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 \$93,042.50, plus interest.

Lease-Purchase Agreement

On December 5, 2020, the city entered into a lease-purchase agreement with Huntington Capital Corporation to purchase a Mack tandem dump truck for \$180,828.00. The agreement was for a term of five years. Principal and interest payments of \$9,819.98 are due quarterly.

During the current examination period, the municipality paid principal of \$25,321.58 and interest of \$4,138.36 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 \$155,506.42, plus interest.

CITY OF WILKES-BARRE LUZERNE COUNTY LIQUID FUELS TAX FUND FINDING AND RECOMMENDATIONS FOR THE PERIOD JANUARY 1, 2020 TO DECEMBER 31, 2020

Finding - Noncompliance With Advertising And Bidding Requirements - Recurring

We cited the city for noncompliance with advertising and bidding requirements in our prior examination report, for the period January 1, 2018 to December 31, 2019. Our current examination disclosed that the city expended \$67,859.00 for paving and \$24,485.20 for line painting from its Liquid Fuels Tax Fund without advertising for bids. These expenditures were as follows:

Invoice	Invoice	Check	Check		
<u>Number</u>	<u>Date</u>	<u>Number</u>	<u>Date</u>	Amount	Totals
4557	01/07/20	78399	01/31/20	\$ 2,639.00	
584	02/18/20	78446	02/28/20	7,125.00	
585	02/25/20	78446	02/28/20	5,240.00	
0002	04/29/20	79240	04/30/20	9,280.00	
0005	05/06/20	79315	05/30/20	5,235.00	
4913	05/20/20	79964	05/31/20	12,750.00	
5068	05/28/20	80195	05/31/20	4,290.00	
0007	07/06/20	5925	08/19/20	11,550.00	
0011	09/23/20	5944	12/30/20	9,750.00	
Paving					\$67,859.00
1220	03/02/20	5904	03/26/20	906.00	
1231	03/06/20	5906	04/09/20	5,393.25	
1238	03/13/20	78840	03/31/20	9,091.10	
1294	05/11/20	5922	07/30/20	3,540.00	
1315	05/26/20	79209	05/30/20	5,554.85	
Line painting					24,485.20
Total Finding					\$92,344.20

The above expenditures were not made in compliance with the advertising, bidding, and contract requirements of *The Third Class City Code*, 53 P.S. § 36901(b), (also found at § 1901 of *The Third Class City 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 \$21,000.00 for 2020, \$21,300.00 for 2021, and \$21,900 for 2022. *The Third Class City Code*, 53 P.S. § 36902, and § 1902 of *The Third Class City Code* as published by the Local Government Commission further states that advertising, bidding and contract requirements should not be evaded through piecemeal purchases.

CITY OF WILKES-BARRE LUZERNE COUNTY LIQUID FUELS TAX FUND FINDING AND RECOMMENDATIONS FOR THE PERIOD JANUARY 1, 2020 TO DECEMBER 31, 2020

<u>Finding - Noncompliance With Advertising And Bidding Requirements - Recurring (Continued)</u>

The failure to follow *The Third Class City Code* could result in the city having to reimburse \$92,344.20 to its Liquid Fuels Tax Fund.

The municipal officials stated that this condition occurred because the city kept adding similar work without realizing they were close to the dollar thresholds of the bidding requirements.

Recommendations

We recommend that the city reimburse \$92,344.20 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We again recommend that, in the future, the city complies with *The Third Class City Code* as noted in this finding.

Management's Response

The finance officer and the director of operations offered no formal response at this time.

Auditor's Conclusion

This is a recurring finding. We strongly recommend that the city comply with our recommendations. During our next examination we will determine if the municipality complied with our recommendations.

CITY OF WILKES-BARRE LUZERNE 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 city should reimburse \$93,932.65 to its Liquid Fuels Tax Fund for noncompliance with advertising and bidding requirements.

During our current examination, we reviewed a letter dated July 14, 2021, from the Department of Transportation directing the municipality to reimburse \$93,932.65 to its Liquid Fuels Tax Fund. We noted that the municipality reimbursed this amount to its Liquid Fuels Tax Fund on December 27, 2021, which was subsequent to our examination period.

In our prior report, we also recommended that the municipality comply with *The Third Class City Code* by advertising for bids for all purchases over \$20,100.00 during 2018 and \$20,600.00 during 2019. The threshold for advertising for bids increased to purchases over \$21,000.00 for 2020, \$21,300.00 for 2021, and \$21,900 for 2022.

During our current examination, we noted that the municipality did not comply with our recommendations (see Finding).

CITY OF WILKES-BARRE LUZERNE COUNTY LIQUID FUELS TAX FUND SUMMARY OF EXIT CONFERENCE FOR THE PERIOD JANUARY 1, 2020 TO DECEMBER 31, 2020

An exit conference was held February 25, 2022. Those participating were:

CITY OF WILKES-BARRE

Mr. Brett Kittrick, Finance Officer

Mr. Attilio Frati, Director of Operations

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Raymond J. Insalaco, Audit Supervisor

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

This report was initially distributed to:

The Honorable Yassmin Gramian, P.E.

Secretary
Department of Transportation

City of Wilkes-Barre Luzerne County 40 East Market Street Wilkes-Barre, PA 18711

The Honorable Beth Gilbert McBride Chairperson of City Council

Mr. Attilio Frati
Director of Operations

Mr. Brett Kittrick
Finance Officer

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.