



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 9, 1998

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller of Public Accounts
LBJ State Office Building
Austin, Texas 78774

OR98-0396

Dear Ms. Joseph:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112434.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information concerning a particular taxpayer. Among the information requested is any information showing tax advice received by the taxpayer regarding compliance with Texas franchise tax law.¹ You submitted to this office records that contain information responsive to the request. You assert that section 552.101 of the Government Code, in conjunction with section 111.006(a)(2) of the Tax Code, protects the records from disclosure.

Section 552.101 of the Government Code provides that information made confidential by law is excepted from disclosure under the Texas Open Records Act. Section 111.006(a)(2) of the Tax Code provides:

(a) Except as provided by subsection (d), the following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b) of this section:²

...

¹The requestor also asked for other information, but you state that the comptroller is responding to the other requests for information separately. Since you specifically seek a decision only in regard to the request for information about tax advice received by the taxpayer, this letter is limited to answering your question about the submitted records.

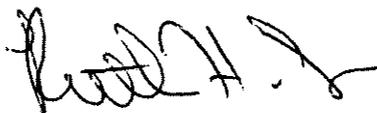
²Subsection (b) of section 111.006 provides that the information made confidential under subsection (a) may not be subject to subpoena directed to the comptroller or the attorney general except in a judicial or an administrative proceeding in which this state, another state, or the federal government is a party. Subsection (d) of section 111.006 provides that information made confidential under subsection (a) may be examined by certain state officers, law enforcement officers, tax officials, federal officials, or the authorized representatives of such officers or officials under certain conditions not at issue here.

(2) all information secured, derived, or obtained by the comptroller or the attorney general *during the course of an examination* of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer (emphasis and footnote added).

This provision makes confidential information the comptroller secured, derived, or obtained during the course of an examination. *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). You assert that the submitted records were obtained by the comptroller during a 1992 franchise tax audit of the taxpayer. Based upon the information you provided to this office, we agree that the submitted records are protected from disclosure under section 111.006(a)(2).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ ch

Ref.: #112434

Enclosures: Submitted documents

cc: Mr. Hugh Tollack
7139 Tabor Drive
Dallas, Texas 75231
(w/o enclosures)