



March 16, 1999

Ms. Sandra C. Joseph
Office of Comptroller of Public Accounts
LBJ Building
111 E. 17th Street
Austin, Texas 78744-0100

OR99-0749

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122779.

The Comptroller of Public Accounts (the “comptroller”) received an open records request for “a list of names of the enterprise projects that have filed with the comptrollers [sic] office for refunds of sales and use tax section 3.329 using form 01-124 & 12-015.” You contend that the requested information is made confidential under section 111.006(a)(2) of the Tax Code and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.¹

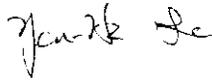
Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 111.006(a)(2) of the Tax Code provides that information “secured, derived, or obtained by the comptroller or the attorney general during the course 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” is confidential. In Open Records Letter No. 96-2203 (1996), this office determined that information that a taxpayer submitted to the comptroller in connection with requests for refunds for insurance premium taxes constituted information “secured, derived, or obtained by the comptroller . . . during the course of an examination” and was therefore made confidential under section 111.006(a)(2).

¹We note that, although containing substantially similar language, section 151.027(b) of the Tax Code may be the more appropriate statute to raise in this instance.

In this instance, however, the requestor seeks only the names of taxpayers who have sought refunds of sales and use taxes under section 151.429 of the Tax Code. We therefore do not believe that the mere release of the names of those businesses that have actually sought such tax refunds reveals the "business affairs, operations, source of income, profits, losses, or expenditures" about those businesses. *See also A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 680 (Tex. 1995) (holding as public mere fact that refund warrant resulted from taxpayer audit). Because we conclude that the requested information is not made confidential under section 111.006(a)(2) of the Tax Code, the comptroller must release this information.

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/ch

Ref.: ID# 122779

Enclosures: Submitted documents

cc: Mr. Ted Strehlau
Texas Utility Auditing
P.O. Box 1961
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(w/o enclosures)