



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2009

Ms. Ruth H. Soucy  
Deputy General Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2009-15397

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 359899 (Comptroller ID# 5874435823).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information relating to franchise tax refund amounts. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including sections 111.006 and 171.206 of the Tax Code. Section 111.006 of the Tax Code protects from disclosure the following types of taxpayer information obtained from an audit of a taxpayer:

all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's book, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

Tax Code § 111.006(a)(2). Section 171.206 of the Tax Code provides that the following information is generally excepted from disclosure:

(1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or

(2) information, including information about the business affairs, operations, profits, losses, cost of goods sold, compensation, or expenditures of a taxable entity, obtained by an examination of the books and records, officers, partners, trustees, agents, or employees of a taxable entity on which a tax is imposed by this chapter.

*Id.* § 171.206. The question of whether franchise tax refund amounts are excepted from public disclosure under the Act was addressed by the Texas Supreme Court in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-679 (Tex. 1995). The Supreme Court addressed the applicability of sections 111.006 and 171.206 of the Tax Code to the Act:

The Tax Code prevents the disclosure of data “obtained” or “derived” from a taxpayer . . . Confidentiality under the Tax Code thus turns on the identity of the *source* of the information. It makes confidential the information obtained or derived from *taxpayers*.

*Id.* at 676 (citations omitted) (emphasis in original). The court concluded that:

[T]he amounts of assessed deficiencies, refunds, or credits are derived from taxpayer-furnished information, and are thus confidential . . . [and] it strikes the proper balance between the Tax Code and [the Act] for the comptroller to disclose that audits resulted in a deficiency assessment or refund warrant, but not to disclose the amounts of an assessment or refund.

*Id.* at 680 (citations omitted). You state the information at issue consists of actual tax refund amounts. Upon review, we agree the submitted information reveals refund amounts derived from the records of taxpayers. We therefore find the comptroller must withhold the submitted franchise tax refund amounts under section 552.101 of the Government Code in conjunction with sections 111.006(a)(2) and 171.206 of the Tax Code and the Texas Supreme Court’s decision in *A&T Consultants*.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/tl

Ref: ID# 359899

Enc. Submitted documents

c: Requestor  
(w/o enclosures)