



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2013

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
Po Box 13528
Austin Tx 78711-3528

OR2013-06009

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# 484493 (Comptroller ID No. 8922790750).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for an itemized list of the top twenty-five taxpayers for the margin tax for fiscal year 2012, including taxpayer or firm name and the amount paid. You claim the requested 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 section 171.206 of the Tax Code. Section 171.206 of the Tax Code provides the following information collected under the Franchise Tax Act 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.

Tax Code § 171.206. The Supreme Court of Texas addressed the applicability of section 171.206 of the Tax Code to information requested under the Act in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995), stating:

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). Accordingly, section 171.206 excepts from public disclosure information and data obtained or “derived” from a taxpayer’s records. You state the submitted list is confidential under section 171.206 because it consists of information compiled from franchise tax amounts that were required to be reported and paid by franchise taxpayers pursuant to chapter 171 of the Tax Code. You also state the amounts at issue include payments made as a result of section 171.206(2) franchise tax examinations and subsequent payments made by taxpayers, as required under chapter 171. Thus, based on your representations and our review, we find the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 171.206 of the Tax Code.

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, 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,

A handwritten signature in black ink that reads "Britni Fabian". The signature is written in a cursive, flowing style.

Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 484493

Enc. Submitted documents

c: Requestor
(w/o enclosures)