



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 8, 2015

Mr. David D. Menchaca
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2015-21087

Dear Mr. Menchaca:

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# 582340 (Comptroller ID# 11637627652, 11642886469, and 11774348860).

The Texas Comptroller of Public Accounts (the "comptroller's office") received three requests for the list of taxpayers who are currently using percentage based sales tax reporting. You claim 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. You contend the submitted information is confidential pursuant to section 111.006(a)(2) of the Tax Code, which makes confidential 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." Tax Code § 111.006(a)(2).

The supreme court considered the applicability of section 111.006 to several categories of information in *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). In doing so,

the court not only considered if the information was derived from the taxpayer's records, but also whether the information reveals anything about the taxpayer's business affairs, operations, financial condition, profits, or losses. *Id.* at 676, 680. The court concluded while the amounts of deficiencies or refunds are derived from the taxpayer's records, the fact of a deficiency or refund "reveals nothing about taxpayers except that they miscalculated their tax." *Id.* at 680; *see id.* at 680 n. 6. Thus, the fact of a deficiency or refund is not confidential under section 111.006.

Based on *A & T Consultants*, only information that is obtained from the taxpayer and reveals the taxpayer's business affairs, operations, financial condition, profits, or losses is confidential under section 111.006. You state the information at issue was derived by the comptroller's office during the course of examinations of taxpayers. However, we find the submitted information does not reveal any taxpayer's business affairs, operations, financial condition, profits, or losses. *See id.* at 675-76 (holding the Act does not permit public information to be withheld because it might be used in conjunction with other publicly available information, thereby allowing requestor to deduce confidential information). Consequently, the submitted information is not confidential under section 111.006(a)(2) of the Tax Code, and it may not be withheld under section 552.101 of the Government Code on that basis. As you raise no further exceptions to disclosure, the submitted information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 582340

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)