



COMPTROLLER OF PUBLIC ACCOUNTS
STATE OF TEXAS
AUSTIN, TEXAS 78774-0100

August 21, 2002

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OPINION COMMITTEE

RQ-0592-JC

The Honorable John Cornyn
Attorney General
State of Texas
Post Office Box 12548
Austin, Texas 78711-2548

FILE # ML-42759-02

I.D. # 42759

Re: Attorney General Opinion Request

Dear General Cornyn:

This is a request for an opinion made pursuant to Section 402.042 of the Government Code. The specific question posed is whether the Comptroller of Public Accounts may disclose the amount of current tax, penalty, and interest owed by a delinquent taxpayer when that amount is actually secured by a publicly available state tax lien, even if the total amount owed is not reflected on the face of the lien.

Background

The Comptroller of Public Accounts (the "Comptroller") is the elected constitutional officer of the state charged with collecting most taxes and fees owed to the state. TEX. TAX CODE ANN. § 111.001 (Vernon 2001); *see generally* TEX. GOV'T CODE ANN. § 403.011 (Vernon Supp. 2002). In the exercise of this collection function, the Comptroller may assess a tax deficiency by a formal audit or by reviewing taxpayer returns. A taxpayer against whom a deficiency is assessed has the right to contest that assessment through the administrative hearing process. *See* TEX. TAX CODE ANN. §§ 111.008, .009. If a redetermination hearing is not timely requested or if an audit assessment is affirmed at the end of the hearing process, the deficiency assessment becomes an administratively final liability. *Id.* § 111.0081. The agency may commence collection actions when the liability is administratively final and delinquent. *See id.* § 111.017.

One of the enforcement tools that can be used in delinquency situations is the filing of a state tax lien. *Id.* § 113.001. The lien, which is generally filed in the county or counties in which the taxpayer is believed to have assets or active business outlets, attaches to all of the taxpayer's real and personal property that is subject to execution. *Id.* The lien notice filed by the Comptroller with each county must list the name and address of the

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taxpayer; the type of tax that is owed; each period for which the tax is claimed to be delinquent; and the amount of tax due for each period, excluding penalty and interest. *Id.* § 113.002. The lien is recorded at the county clerk's office in the county courthouse and is maintained as a public record. *See id.* § 113.005.

By statute, one lien is sufficient to cover all taxes of the same nature, including any penalty and interest that may have accrued after the filing of the lien notice. *Id.* § 113.006(b). Thus, the taxpayer's liability may be greater than that reflected on the face of the tax lien. This can happen if delinquent taxpayers accrue multiple tax liabilities for multiple tax reporting periods in the future, with all such liabilities secured by the same lien. There are also instances in which the taxpayer's liability is less than that reflected on the face of the tax lien. Partial payments may have been made after the filing of the lien, reducing the total liability, or adjustments to an estimated liability may be justified based on additional information provided to the Comptroller by the taxpayer. While the original lien amount secured may be reduced, the lien may not be released until full payment is made. *Id.* § 113.009(c). Section 113.006 saves the Comptroller from having to expend additional manpower, time, and additional lien filing fees each time a taxpayer accrues additional liabilities or makes partial payments. At the same time, the single lien ensures protection of the state's collection interests.

Other Tax Code Provisions

Various provisions of the Tax Code make certain types of taxpayer information confidential, particularly Sections 111.006(a)(2), 151.027(a) and (b), and 171.206 of the Tax Code.¹ *See also A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995) (addressing protection provided by Section 111.006 to audit information).

Section 111.006(a)(2) of the Tax Code provides that information is confidential if it is

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.

¹ Your office has issued prior determination rulings and informal rulings to this agency construing the application of these particular provisions to taxpayer information, although in the context of written public information requests seeking information about taxpayers. Open Records Letter Nos. OR98-2897 (1998) (Section 111.006 of Tax Code protects "information about a taxpayer's business affairs regardless of whether the comptroller obtained the information by auditing the taxpayer's business or by requesting information in order to render a private ruling"), OR96-1612 (1996) (construing application of Section 552.025 of Government Code to tax rulings and opinions).

Section 151.027(b) of the Tax Code provides that sales, excise, and use tax information is confidential if it is

secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees, including the business affairs, operations, profits, losses, and expenditures of the taxpayer.

Section 171.206 of the Tax Code protects franchise tax information and reads as follows:

Except as provided by Section 171.207 of [the Tax Code], the following information is confidential and may not be made open to public inspection:

- (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, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed by this chapter.

While these Tax Code provisions provide for confidentiality of certain sales tax, franchise tax, audit, administrative hearings, and litigation information, this agency has traditionally treated all lien information – including the amount secured by the lien – as public and readily available for release. *See* TEX. GOV'T CODE ANN. § 552.022(a)(15) (Vernon Supp. 2002).

Our understanding that this type of information is public is additionally supported by Section 171.207(1) of the Tax Code, which specifically excepts from the general confidentiality provision of Section 171.206 "information contained in a document filed under this chapter with a county clerk as notice of a tax lien." While Section 171.207 specifically addresses only franchise tax information, we believe that the provision demonstrates a legislative acknowledgement that once a tax lien has been filed the lien itself including amounts secured by the lien, even if not shown on the face of the lien, are thereby made public. *See also* Op. Tex. Att'y Gen. No. O-6745 (1945). It is also our belief that—as a matter of public policy—the public has a right to know the amount

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secured by the tax lien. This appears to us to be consistent with the Tax Code confidentiality provisions as to other types of taxpayer information.

Summary

As discussed, this agency has traditionally treated all information contained in lien documents as publicly accessible information that is already in the public realm. Section 113.006(b) provides that a lien secures later, administratively final, unpaid taxpayer delinquencies, plus penalty and interest. Given that tax liens are publicly filed, and Section 113.006(b) of the Tax Code provides that liens secure amounts that may be different from the amounts shown on the lien documents themselves, the question we are posing is whether this agency may disclose the amount of current tax, penalty, and interest owed by a delinquent taxpayer when that amount is actually secured by a publicly available state tax lien, even if the amount owed is not reflected on the face of the lien.

Thank you for your attention to this request for an opinion. Should you need additional information regarding this matter, please feel free to contact me.

Sincerely,



Jesse Ancira, Jr.
General Counsel