



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 25, 1996

Ms. Sandra C. Joseph  
Open Records Counsel/Disclosure Officer  
Comptroller of Public Accounts  
LBJ State Office Building  
111 East 17th Street  
Austin, Texas 78774

OR96-2203

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101987.

The Comptroller of Public Accounts (the "comptroller") received a request for position letters, which were issued by the comptroller and are the subject of pending administrative hearings, relating to refunds for insurance premium taxes. You have provided the requestor with redacted copies of the position letters. However, you assert that section 552.101 of the Government Code, in conjunction with section 111.006(a)(2) of the Tax Code, exempts the redacted parts of the requested information from required public disclosure. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 111.006(a)(2) 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. Tax Code § 111.006(a)(2).

You state that a position letter responds to a taxpayer's request for redetermination of one's tax liability and states the comptroller's position on taxation issues. You argue that the position letters contain confidential information about a taxpayer's business affairs that the comptroller obtained through an examination of a taxpayer's records. You state that the comptroller's office considers the process of determining whether a taxpayer is entitled to a refund is an examination within the meaning of section 111.006(a)(2). You observe that

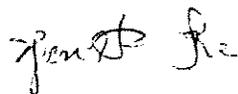
the term "examination" in the Tax Code confidentiality provision is not defined and argue that its scope is not limited to comptroller-initiated examinations to determine whether an amount of tax is owed and paid, but should also include taxpayer-initiated examinations to determine whether a taxpayer is entitled to a refund. You state that in both situations, the process involves examining information provided by the taxpayer and applying the relevant law and administrative rules. Specifically, in insurance tax cases, a taxpayer must submit an application for a refund stating the grounds upon which a refund is authorized, along with documentation that demonstrates how one's business affairs entitles one to a refund. Hence, you urge that certain information provided by the taxpayer in the course of rendering position letters is confidential under section 111.006(a)(2). Accordingly, you have marked the following information as being protected from disclosure: taxpayer's name, taxpayer number, taxpayer representative, and the state(s) in which the taxpayer conducts business.

We agree that the Tax Code's confidentiality provision, section 111.006(a)(2), protects information about a taxpayer's business affairs regardless of whether the comptroller obtained the information from an examination initiated by the comptroller's office or from an examination initiated by a taxpayer via a refund request. To conclude otherwise would thwart the legislative intent to protect information about taxpayers' businesses.

Having determined that section 111.006(a)(2) of the Tax Code applies to position letters, we conclude that the comptroller must withhold all information in the position letters that identifies the taxpayer pursuant to section 552.101 of the Government Code. In this way, we believe the business operations of a particular business are protected while the resolutions of tax questions, including the legal issues and related fact findings raised, are available to the public. *Cf.* Attorney General Decision H-223 (1974) (requiring comptroller to de-identify administrative hearing decisions under predecessor of Tax Code sections 111.006 and 151.027). Accordingly, we conclude that the comptroller must release the position letters to the public but with deletions of all information that identifies a particular taxpayer. Therefore, we agree that the information you have marked in the submitted documents should be withheld.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 101987

Enclosures: Submitted documents

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