



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 12, 1996

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

OR96-2377

Dear Ms. Joseph:

You seek reconsideration of Open Records Letter No. 96-1639 (1996), in which this office determined that certain information requested from the Office of the Comptroller of Public Accounts (the "comptroller") was not excepted from required public disclosure under chapter 552 of the Government Code. We have assigned your request for reconsideration ID# 102373.

In your request for reconsideration, you urge that the three pieces of requested information we concluded could not be withheld from public disclosure, specifically, the taxpayer contact, the hearing number, and the audit type, be withheld under sections 552.101 and 552.108 of the Government Code. For the reasons stated herein, we conclude that the comptroller must withhold this information.

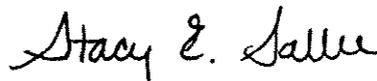
In Open Records Letter No. 96-1639 (1996), we based our conclusion that the comptroller could not withhold the taxpayer contact on the assumption that this was information obtained from the taxpayer *before* the examination begins rather than "during the course of the examination" as required by section 151.207(b) of the Tax Code. You state that this information is, in fact, transmitted to the comptroller by the taxpayer in response to a questionnaire or in a face-to-face interview that is the first step of the examination. Therefore, we conclude that the comptroller must withhold the taxpayer contact under section 151.207(b) of the Tax Code as applied through section 552.101 of the Government Code.

With regard to the audit type, you now point us to language in *A & T Consultants, Inc. v. John Sharp*, 904 S.W.2d 668, 679 (Tex. 1995) in which the Texas Supreme Court determined that audit types are confidential. Therefore, the comptroller must withhold the audit types from required public disclosure.

Finally, you claim that releasing a hearing number when the taxpayer's identity has already been released will, in effect, identify the business affairs of the taxpayer. In Open Records Letter No. 96-1612 (1996), this office concluded that the comptroller is required to withhold information that identifies a taxpayer in private letter rulings. In support of this conclusion, we stated, "In this way, we believe the business operations of a particular business are protected while the resolution of the tax question including the legal issues and related fact findings raised, are available to the public." Open Records Letter No. 96-1612 (1996) at 2. Therefore, as we believe that there is usefulness in the information in these administrative hearing decisions and the only way to release this information without identifying the taxpayer here is to withhold the hearing number, we conclude that the comptroller must withhold the hearing number under section 552.101 of the Government Code.

If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 102373

Enclosures: Submitted documents

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