



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 17, 1997

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street
Austin, Texas 78774-0100

OR97-2075

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108759.

The Comptroller of Public Accounts the ("Comptroller") received a request for "all requests and files pertaining to applications from individuals and groups seeking religious exemption from state taxes." You ask whether the Comptroller must withhold from public disclosure based on section 552.101 of the Government Code information organizations submit to the Comptroller when applying for an exemption from liability for state taxes. You also assert that portions of the requested information are excepted from required public disclosure based on section 552.111 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure information that is deemed confidential by law, including information made confidential by statute. You raise this exception in conjunction with sections 171.206 and 111.006 of the Tax Code.

You raise section 111.006 in regard to information submitted to the Comptroller by organizations applying for an exemption from liability for state taxes.¹ However, we believe

¹The Seventy-Fifth Legislature amended section 111.006 of the Tax Code to read as follows:

- (a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b):

other Tax Code provisions clearly apply to information submitted for the purpose of obtaining tax exempt status. Section 171.206 of the Tax Code reads in part as follows:

Except as provided by Section 171.207 of this 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 file with the comptroller;

Pursuant to a provision in chapter 171 of the Tax Code, a corporation applying for an exemption from franchise taxation must file with the Comptroller, as provided by the Comptroller's rules, evidence of the corporation's qualifications for the exemption. *See* Tax Code § 171.051(a); *see also* 34 T.A.C. § 3.541. Some of the information at issue appears to be "information that is obtained from a record or other instrument that is required by . . . chapter [171] to file with the comptroller." We, therefore, conclude that the information submitted for the purpose of obtaining an exemption from franchise taxation pursuant to section 171.051(a) of the Tax Code is deemed confidential by section 171.206 of the Tax Code. Thus, the Comptroller must not release the information. Gov't Code § 552.101.

Section 151.027(a) of the Tax Code reads as follows:

(a) Information in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection, except for information set forth in a lien filed under this title or a permit issued under this chapter to a seller and except as provided by subsection (c) of this section.

(1) a federal tax return or federal tax return information required to have been submitted to the comptroller with a state tax return or report; and

(2) all 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.

Act of May 8, 1997, 75th Leg., R.S., ch. 165, 1997 Tex. Sess. Law Serv. 327, 562 (Vernon) (to be codified at Tax Code § 111.006(a)), *see also* Tax Code § 111.0043(2) (defining "taxpayer to mean "the person whose tax obligation the comptroller is seeking to determine). As the information at issue was submitted to the Comptroller by organizations in the process of seeking tax exempt status, you ask whether the process of seeking tax exempt status qualifies as 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" for purposes of section 111.006(a) of the Tax Code.

Pursuant to section 151.301 of the Tax Code, an item that meets the qualifications for exemption as provided in chapter 151 of the Tax Code is not subject to sales tax or use tax. *See* Tax Code § 151.301; *see also id.* § 151.310 (concerning religious, educational, and public service organizations), 34 T.A.C. § 3.322. Some of the information appears to be “information in or derived from a record, report, or other instrument required to be furnished under . . . chapter [151 of the Tax Code.]” We, therefore, conclude that the information submitted for the purpose of obtaining an exemption from sales or use taxation pursuant to section 151.301 of the Tax Code is deemed confidential by section 151.027 of the Tax Code. Thus, the Comptroller must not release the information. Gov’t Code § 552.101.

In light of our conclusions under section 552.101 of the Government Code, we need not address your section 552.111 claim at this time. We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/rho

Ref.: ID# 108759

Enclosures: Submitted documents

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(w/o enclosures)

