

February 1, 1999

Ms. Sandra Joseph
Open Records/Disclosure Officer
Comptroller of Public Accounts
State of Texas
Austin, Texas 78774-0100



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— ★ —
JOHN CORNYN
Attorney General

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P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

OR99-0295

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# 121457.

The Comptroller of Public Accounts (the "comptroller") received a request for documents relating to hearing number 33972. You contend that part of the responsive information is excepted from public disclosure by sections 552.101, 552.107 and 552.111 of the Government Code. You have submitted the responsive documents, marked to indicate that information you seek to withhold. We have considered the exceptions you claim and have reviewed the documents at issue.

We first address your arguments raised under Government Code section 552.101. This statute excepts from public release information made confidential by constitution, court decision or statute. Tax Code section 111.006(a)(2) provides, with exceptions not applicable here, that "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" is confidential. Thus, the business information of the taxpayer is protected by this statute. Our office indicated in Open Records Letter No. 97-0295 (1997) that this Tax Code section must be balanced against Government Code sections 552.025 and 552.022(12).

Government Code section 552.022(12) defines as public information "final opinions, including concurring and dissenting opinions, and others issued in the adjudication of cases." Section 552.025 provides that a "written determination letter, technical advice memorandum or ruling that concerns a tax matter" is public information.

We agree with your observation that the legislative intent of Government Code section 552.025 is to require state taxing authorities to provide the public with information as to how tax laws are administered. This statute, in concert with Tax Code section 111.006(a)(2), requires a taxing authority to make this information available to the public, while withholding information that compromises the business interests of taxpayers. Our office has struck this balance by instructing taxing authorities to release administrative decision documents with taxpayer identifying information deleted for, “[i]n this way, the comptroller’s conclusions on legal issues and the related fact findings will be available to the public while the confidentiality of information within [Government Code and Tax Code sections] will be protected. Open Records Decision No. 624 at 3 (1994). We have also noted that “although content of a communication may be confidential, the fact that a communication was made is not.” Open Records Decision No. 88 (1975). Hence, the fact that an individual requested a hearing could be disclosed but the facts about the taxpayer’s business could not. Attorney General Opinion JM-590 at 3 (1986).

We now turn to the items you seek to withhold from disclosure. Your “enclosure 2” appears to be a draft of a final decision and of pleadings related to that decision. You indicate that you have released a version of the respective final decision with taxpayer identifying information redacted. As information linking the taxpayer’s identification to this hearing number has the effect of revealing business information derived from this taxpayer, we agree that these documents should be de-identified. However, we note that you have sought to redact the identity of the taxpayer’s attorney. As you have not shown how this information would identify the taxpayer, we find that this information is not excepted from disclosure. With the exception of the taxpayer’s attorney identifying information, the information marked by you is excepted from public disclosure by Government Code section 552.101 in conjunction with Tax Code section 111.006(a)(2). This analysis applies equally to the information in your “enclosure 3.”

Your “enclosure 4” appears to be neither a final opinion in an adjudicated case, subject to Government Code section 552.022(12), nor a “written determination letter, technical advice memorandum or ruling that concerns a tax matter,” subject to section 552.025. We agree that these documents, in their entirety, are within the purview of Tax Code section 111.006(a)(2), and must therefore not be disclosed to the public generally.

Your “enclosure 5” is an “Attachment A”, which you relate is essentially a billing statement. Once again, the information that links the taxpayer’s identity to the information protected by Tax Code section 111.006(a)(2) must be redacted before release to the general public. We conclude that the information marked is excepted from disclosure.

Your "enclosure 6" is essentially a statement of tax liability, with supporting documents. We agree that these documents, in their entirety, may be withheld under section 552.101 of the Government code in conjunction with Tax Code section 111.006(a)(2),

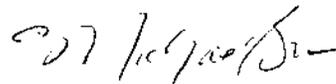
Your "enclosure 7" contains information that would reveal the taxpayer's identity and link that identity to the taxpayer's business information. We agree that the information as marked must not be released to the general public.

Your "enclosure 8" contains information that is excepted from disclosure by section 552.111 of the Government Code. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. The items submitted in this enclosure appear to be internal memoranda dealing with policy issues. Therefore this information may be withheld.

You next contend that the information in your "enclosure 9" is excepted from disclosure pursuant to section 552.111 of the Government Code, as attorney work product. You relate that the documents in this enclosure are "hand written notes prepared by the Administrative Law Judge and the Tax Division's attorney." As the work product doctrine protects only the information generated by the attorney representing the party claiming that privilege, to the degree that the subject information was not produced by an attorney representing the comptroller, said information is presumed public and must be disclosed.

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

Yours very truly,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 121457

Enclosures: Submitted documents

cc: Mr. Daniel A. Edelman
Edelman & Combs
135 South LaSalle Street, Suite 135
Chicago, Illinois 60603
(w/o enclosures)