



August 10, 1999

Mr. Scott Fawcett
Legal Counsel
Open Records Division
Office of Comptroller of Public Accounts
111 E. 17th Street
Austin, Texas 78711

OR99-2254

Dear Mr. Fawcett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126336.

The Comptroller of Public Accounts (the “comptroller”) received a request for sixteen items of information about each completed tax audit performed between December 1, 1998 and April 30, 1999. You state that you will release most of the responsive information to the requestor. You claim, however, that two of the requested items, the tax adjustment and the audit reason, are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the sample information.¹

Initially, you assert that the requested tax adjustment information may encompass information that is protected from disclosure under section 111.006 of the Tax Code as interpreted by the Texas Supreme Court in *A&T Consultants Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). Section 111.006(a)(2) provides that information secured, derived, or obtained by the comptroller during the course of an examination of a taxpayer’s books, records, papers, officers, or employees, is confidential.

The Texas Supreme Court has interpreted this statute to prohibit release of the amount of a deficiency assessment or refund warrant. *Id.* at 680. The court stated: “We conclude that it strikes the proper balance for the comptroller to disclose that audits resulted in a deficiency assessment or refund warrant, but not to disclose the amounts of an assessment or refund. The fact of a deficiency or a refund reveals nothing about taxpayers except that they miscalculated their tax.” *Id.* Therefore, to the extent that the requestor seeks the amount of

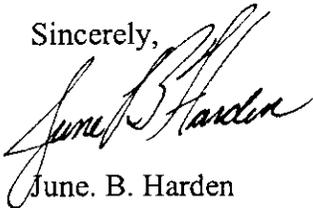
¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a tax deficiency or refund, that information is confidential under section 111.006(a)(2) and must not be released.

You also contend that the reason the comptroller conducted the audits is excepted from disclosure under section 552.108 of the Government Code based on the reasoning in *A & T Consultants*.² In *A & T Consultants*, the court held that the state comptroller could withhold the following information under section 552.108: the generation list dates and assignment dates for audits which have not been completed, the reasons for any audits, the audit method and group, and the assignment codes. *Id.* at 677-681. Therefore, in light of the court's decision in *A & T Consultants*, we agree that the comptroller may withhold the reasons for the audits under section 552.108.³

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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

²Section 552.108 of the Government Code provides in pertinent part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication . . . (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred [.]

³Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

JBH\ch

Ref: ID# 126336

Encl: Submitted documents

cc: Mr. Tommy Morgan
State Tax Management & Reveiw
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(w/o enclosures)