



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2010

Mr. James G. Nolan
Assistant General Counsel
Texas Comptroller of Public Accounts
P. O. Box 13528
Austin, Texas 78711-3528

OR2010-07115

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 379716 (Comptroller ID# 6200131414).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for the settlement agreement pertaining to cause number GN401380. You claim portions of the submitted settlement agreement are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential, such as section 111.006 of the Tax Code, which provides in relevant part:

(a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted by this section:

...

(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.

Tax Code § 111.006(a)(2). In *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995), the Texas Supreme Court considered the applicability of section 111.006 to several categories of information and noted:

The Tax Code prevents the disclosure of data "obtained" or "derived" from a taxpayer. . . . Confidentiality under the Tax Code thus turns on the identity of the *source* of the information. It makes confidential the information obtained or derived from *taxpayers*.

Id. at 676 (citations omitted) (emphasis in original). The court concluded:

[T]he *amounts* of assessed deficiencies, refunds, or credits are derived from taxpayer-furnished information, and are thus confidential [Furthermore,] it strikes the proper balance between the Tax Code and [the Act] 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.

Id. at 680 (emphasis in original). You seek to withhold the tax refund amounts you have marked in the submitted settlement agreement. You state the marked information consists of taxpayer financial information derived through examination of the taxpayer's books and records during a franchise tax audit. Based on your representations and our review, we find the comptroller must withhold the marked tax refund amounts under section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code and the ruling in *A&T Consultants*.¹ As you have not claimed any exceptions to disclosure for the remaining information, it must be released.

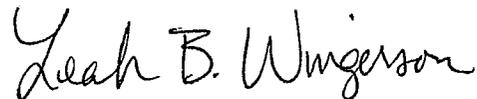
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹As our ruling is dispositive for this information, we need not address your remaining argument against disclosure for this information.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 379716

Enc. Submitted documents

c: Requestor
(w/o enclosures)