



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2010

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2010-16295

Dear Ms. Soucy:

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# 398186 (Comptroller ID# 6531911437).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for the requestor's client's reportable taxable purchases reported by wholesalers and distributors as required by Tax Code sections 151.433, 154.212, and 155.105 from February 2005 to March 2009.¹ You state the comptroller does not have some of the requested information.² You claim the submitted information is 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 made confidential by other statutes, including sections 151.433, 154.212, and 155.105 of the Tax Code, which were added by the

¹You inform us the comptroller received clarification regarding this request. *See* Gov't Code § 522.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Eightieth Legislature. *See* Tax Code §§ 151.433, 154.212, 155.105. Section 151.433 provides in part:

...

(b) The comptroller may, when considered necessary by the comptroller for the administration of a tax under this chapter, require each wholesaler or distributor of beer, wine, or malt liquor to file with the comptroller a report each month of sales to retailers in this state.

(c) The wholesaler or distributor shall file the report on or before the 25th day of each month. The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(1) the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered beer, wine, or malt liquor, including the city and zip code;

(2) the taxpayer number assigned by the comptroller to the retailer, if the wholesaler or distributor is in possession of the number;

(3) the permit or license number assigned to the retailer by the Texas Alcoholic Beverage Commission; and

(4) the monthly net sales made to the retailer by outlet by the wholesaler or distributor, including the quantity and units of beer, wine, and malt liquor sold to the retailer.

Tax Code § 151.433(b)-(c); *see also id.* § 151.433(a) (defining "distributor," "retailer," and "wholesaler"). Sections 154.212(a) and 155.105(a) similarly authorize the comptroller to require reports containing essentially the same information pertaining to wholesalers and distributors of cigarettes, cigars, and tobacco products. *See id.* §§ 154.212(a)-(b), 155.105(a)-(b). With regards to the reports required to be filed by wholesalers and distributors of beer, wine, and malt liquor, section 151.433(e) provides:

Except as provided by Section 111.006 [of the Tax Code], information contained in a report required to be filed by this section is confidential and not subject to disclosure under [the Act].

See id. § 151.433(e). Sections 154.212(d) and 155.105(d) contain the identical confidentiality provision for reports required to be filed by distributors and wholesalers of

cigarettes, cigars, and tobacco products. *See id.* §§ 154.212(d), 155.105(d); *see also id.* § 111.006 (providing limited exceptions to confidentiality for certain information obtained by the comptroller).

We note you have submitted to this office reports reflecting sales made by various distributors to the requestor's client, who is a retailer, for beer, wine, malt liquor, cigarettes, and other tobacco products. You represent the submitted information is contained in reports required to be filed with the comptroller in accordance with sections 151.433, 154.212, and 155.105 of the Tax Code. You state the information does not fall within an exception to disclosure under section 111.006. Furthermore, we note sections 151.433, 154.212, and 155.105 do not contain access provisions for retailer taxpayers or their authorized representatives. Based on these representations and our review, we find the information in the submitted reports pertaining to sales of beer, wine, and malt liquor is confidential under section 151.433(e) of the Tax Code; the information in the submitted reports pertaining to sales of cigarettes is confidential under section 154.212(d) of the Tax Code; and the information in the submitted reports pertaining to sales of cigars and tobacco products is confidential under section 155.105(d) of the Tax Code. As such, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with sections 151.433(e), 154.212(d), and 155.105(d) of the Tax Code.

You also ask this office to issue a previous determination permitting the comptroller to withhold information subject to sections 151.433, 154.212, and 155.105 of the Tax Code, unless the information falls within an exception to disclosure under section 111.006 of the Tax Code, without the necessity of requesting a decision from this office. *See Gov't Code* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the comptroller must withhold from required public disclosure information required to be filed with the comptroller in accordance with sections 151.433, 154.212, and 155.105 of the Tax Code pursuant to section 552.101 of the Government Code in conjunction with sections 151.433(e), 154.212(d), and 155.105(d) of the Tax Code. The comptroller may rely on this previous determination to withhold requested information only when section 111.006 of the Tax Code does not apply. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the comptroller need not ask for a decision from this office again with respect to this type of information. *See ORD 673 at 7.*

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

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 398186

Enc. Submitted documents

c: Requestor
(w/o enclosures)