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TEXAS COMPTROLLER of PUBLIC ACCOUNTS

P.O. Box 13528 • AUSTIN, TX 78711-3528



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JUL 14 2008

OPINION COMMITTEE

July 14, 2008

The Honorable Greg Abbott
Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0727-GA

FILE # ML-45762-08

I.D. # 45762

Re: Attorney General Opinion Request Regarding Economic Development Act Report

Dear General Abbott:

This is a request for an opinion pursuant to Section 402.042 of the Texas Government Code. This request concerns the scope of a biennial report required by Sections 313.008 and 313.032 of the Texas Tax Code, added by the 80th Legislature. Specifically, we seek your opinion regarding the following questions:

- 1) Whether the Comptroller's report is limited to the 11 items listed in Sections 313.008(a) and 313.032(a)?
- 2) Whether the Comptroller may use in the report information provided by recipients of limitation on appraised value agreements, regardless of whether the information was marked as confidential by the recipients?

Background

Chapter 313 of the Texas Tax Code, the Texas Economic Development Act, charges the Texas Comptroller of Public Accounts with creating a report assessing the progress and compliance of property value limitation agreements. This biennial report relies on data provided by the property value limitations recipients. The report must contain at least 11 listed categories of information. To comply with the mandate of "assessing the progress of each agreement," additional related information was obtained from the recipients for inclusion in the report.

The Comptroller's report may not include information made confidential by law. TEX. TAX CODE §§ 313.008(b), .032(b). This limitation regarding not putting confidential information in the report will allow full and open public access to the report. As noted above, information was obtained for the report from the property value limitations recipients; however, some of the respondents have marked their submissions "confidential," in whole or in part. The Comptroller anticipates using information contained in the submissions in the required report.

Discussion

Chapter 313 requires that the Texas Comptroller create a report with enough useful detail to show the progress of each agreement. Sections 313.008 and .032 list certain specific categories of information that must be included in the report. This agency understands this list of items to be a minimum requirement for the report, but not a limitation on what may be included. The Comptroller asked for, and obtained, what this agency considers to be generally public information from each recipient that is necessary to complete the report. This agency anticipates using underlying reported data for this public report.

When a third party marks submitted information as proprietary or confidential, governmental agencies will generally not affirmatively publish that information. If this agency receives a written request for information marked by the third party submitting the information as proprietary or confidential, those written requests are referred to your office for a ruling under the Texas Public Information Act and the third party is notified of the request. This allows the entity submitting the information to present its arguments against release. Government Code Section 552.305 provides that when information is requested in writing from a governmental body "and a person's privacy or property interests may be involved," the governmental body may decline to release the information while seeking an Attorney General ruling. We believe that the Chapter 313 requirements to create a report showing the progress of these agreements allow this agency to use the underlying information, even if marked as confidential. The report itself is a matter of public interest, and the information submitted by recipients is vital to publication of the report. It would also seem unreasonable for entities to exempt their data from all reporting use, merely by marking submitted information as confidential or proprietary. We have enclosed for your review a sample letter from this agency to a property value limitations recipient by which we seek information required for the Chapter 313 report. Also enclosed are sample submissions, marked as confidential, sent to this agency by property value limitations recipients in response to our request for Chapter 313 information.

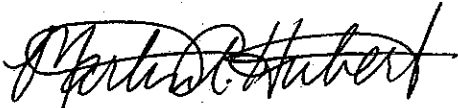
Conclusion

To comply with Chapter 313 of the Texas Tax Code, the Comptroller is charged with creating a report assessing the progress of agreements concerning limitations on the appraised value of certain qualified properties. The Comptroller obtained from recipients of those agreements only the information necessary to create the required report, within the scope of what is required for the report. Only information that the Comptroller believed to be public and necessary for the report was requested from recipients. Some of the information provided to the Comptroller was marked as confidential. To ensure uniformity in what is included in the mandated report, and to create a useful, publicly available report, the Comptroller seeks your opinion regarding whether the information provided by the recipients—even if marked confidential—may be used by the Comptroller for the report.

Honorable Greg Abbott
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Because this report must be provided to the legislature before the beginning of the next legislative session in January 2009, we would appreciate your opinion on this matter as soon as possible. Should you need additional information regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martin A. Hubert".

Martin A. Hubert
Deputy Comptroller

**Sample Letter Seeking
Chapter 313 Information**

S U S A N

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TEXAS COMPTROLLER *of* PUBLIC ACCOUNTS

P.O. Box 13528 • AUSTIN, TX 78711-3528



March 27, 2008

Mr. Stephen Pike

Enel

1 Tech Drive, Suite 220

Andover, Maryland 01810

RE: Information request related to Chapter 313 Property Value Limitations

Dear Mr. Pike:

The 80th Legislature passed several new laws giving the Comptroller of Public Accounts new duties under Tax Code Chapter 313, which provides for a limitation on the appraised value of certain qualified property. House Bill 2994, HB 3430 and HB 3693 require our office to prepare a biennial report to the Legislature assessing the progress of each Chapter 313 project. The new laws (Tax Code §313.032) require the agency to prepare the report using data certified to us by limitation recipients. This letter serves to notify you of this new requirement and the attached form lists the information items necessary for the agency to complete this report. Also, please note that our Web site summarizes Chapter 313, as amended, and contains links to recent statutory changes and links to newly adopted rules and forms (<http://www.window.state.tx.us/taxinfo/proptax/hb1200/index.html>)

In 2001, the Legislature first passed Chapter 313 into law as the Texas Economic Development Act (HB1200). The first applications were approved by school districts in 2002 and became effective with tax year 2003. Each year since 2002, school districts have approved more projects. Recipients in the first group of Chapter 313 projects, which began in 2003, will have five years of actual data to report on the attached form (2003-2007) and could have updated projections for the remaining years based on their experience to date. Recipients with projects beginning in succeeding years will have fewer years of actual data to report, but may have updated projections as well. Please consider Year 1 data on the form to be data for the first year of the agreement's qualifying time period, not the first year of the limited value. Continue to add data for each additional year as appropriate so that all actual data through 2007 is included.

In the event that an agreement has been assigned to one or more different entities, we will need a separate spreadsheet submitted from each entity currently acting as an agreement holder. In the event of multiple assignments of an agreement, you are only required to provide data for your portion of the agreement. If you are no longer an agreement holder due to an assignment, or you are an agreement holder not in the original agreement, our new rules require you to send us documentation of the assignment.

Mr. Stephen Pike

March 27, 2008

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We have enclosed the required form with this letter. You may also download this form (*NOTE: two tabs*) electronically at <http://www.window.state.tx.us/taxinfo/proptax/info313.xls>. You will need to submit one form for each school district to which you applied for the limitation.

Please mail the completed form(s) to:

Gary Price

Regional Fiscal Analysis

Texas Comptroller of Public Accounts

LBJ State Office Building, Third Floor

111 East 17th Street

Austin, Texas 78774

You may also e-mail the signed form(s) to gary.price@cpa.state.tx.us.

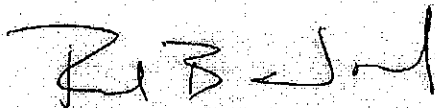
Thank you in advance for your assistance in this effort. I know this is a busy time of the year for your office and staff. To comply with the new reporting requirement, however, we must ask that you provide this information to us by May 1, 2008. Should you have any questions, please contact Gary Price in the Regional Fiscal Analysis group, by e-mail at gary.price@cpa.state.tx.us or by phone at (800) 531-5441, ext. 3-3993, or direct in Austin at (512) 463-3993.

Your Chapter 313 Project Agreements (according to our records). Please verify and respond.

Hermleigh ISD

Windkraft Nord

Sincerely,



Robert Wood

Director, Local Government Assistance and Economic Development

Enclosure

cc: Gary Price