



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 2, 2020

Mr. David D. Menchaca  
Assistant General Counsel  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2020-22178

Dear Mr. Menchaca:

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# 842693 (Ref. Nos. 17395 and 17402).

The Texas Comptroller of Public Accounts (the "comptroller's office") received two requests from different requestors for specified requests for private letter rulings. The comptroller's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the comptroller's office states release of this information may implicate the proprietary interests of Annova LNG Brownsville A, LLC, and SurgiQuest, Inc. Accordingly, the comptroller's office states, and provides documentation showing, it notified these third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exception 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. Section 111.006(a)(2) of the Tax Code provides that information "secured, derived, or obtained by the [comptroller's office] 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. Tax Code § 111.006(a)(2).

The supreme court considered the applicability of section 111.006 to several categories of information in *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). In doing so,

the court not only considered if the information was derived from the taxpayer's records, but also whether the information reveals anything about the taxpayer's business affairs, operations, financial condition, profits, or losses. *Id.* at 676, 680. The court concluded that the starting and ending dates of an audit, although they may indicate the seriousness of an audit, are not confidential under section 111.006 because the seriousness of an audit "reveals nothing about a taxpayer's business affairs, operations, or profits or losses." *Id.* at 676. Similarly, the court concluded that while the amounts of deficiencies or refunds are derived from the taxpayer's records, the fact of a deficiency or refund "reveals nothing about taxpayers except that they miscalculated their tax." *Id.* at 680; *see id.* at 680 n.6. Thus, the fact of a deficiency or refund is not confidential under section 111.006.

You assert the submitted information consists of information "secured, derived, or obtained" by the comptroller's office during the course of examinations of taxpayers. Based on our review of the information at issue and *A & T Consultants*, we conclude the submitted information is confidential under section 111.006 of the Tax Code and must be withheld under section 552.101 of the Government Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Katie Stallcup  
Assistant Attorney General  
Open Records Division

AKS/gw

Ref: ID# 842693

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)