



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 337

*August 16, 1996*

*Whether the "revolving door" law prohibits a former employee of the comptroller from acting as legal counsel for a taxpayer in a "redetermination proceeding" that disputes the results of a sales tax audit the lawyer provided advice on while an employee of the comptroller. (AOR-373)*

The Texas Ethics Commission has been asked whether the "revolving door" provision in section 572.054(b) of the Government Code prohibits a lawyer from representing a taxpayer in a "redetermination proceeding" in which the taxpayer disputes the results of a sales tax audit by the Comptroller. The lawyer, as an employee of the Comptroller, provided advice in connection with the audit.

Section 572.054 of the Government Code prohibits a former state employee<sup>1</sup> of a regulatory agency from representing a person or receiving compensation for services rendered on behalf of any person regarding a particular matter in which the former state employee participated during his or her state employment. For purposes of that provision, a "particular matter" is "a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding." Gov't Code § 572.054(h)(2). "Participated" means "to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action." *Id.* § 572.054(h)(1). In this case the requestor participated in the audit in question. The question raised here is whether a redetermination proceeding regarding that audit is part of the same "matter" as the audit itself.

In a 1992 opinion, this commission considered whether the "revolving door" provision now set out in section 572.054(b) of the Government Code prohibited a former state employee who had participated in an audit of a particular person from giving his new employer advice in regard to a subsequent audit of that person. [Ethics Advisory Opinion No. 23](#) (1992). The opinion stated that whether the subsequent audit was a new matter or a continuation of an ongoing matter was a fact question. *Id.* at 2. In this case, it is clear that the redetermination proceeding is a continuation of an ongoing matter since the redetermination proceeding is, in essence, an appeal of the findings reached in the audit. Tax Code § 111.009; 34 T.A.C. § 1.5(a). Therefore, the requestor may not represent the taxpayer in the redetermination proceeding.<sup>2</sup>

### SUMMARY

A sales tax audit and a redetermination proceeding in which the audit findings are disputed are part of the same "matter" for purposes of section 572.054(b) of the Government Code.

<sup>1</sup> Section 572.054(b) applies only to former employees who were compensated, as of the last day of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. Gov't Code § 572.054(c)(2).

<sup>2</sup> The requestor points out the issues in dispute in the redetermination proceeding are unrelated to the technical advice the requestor provided in connection with the audit. The prohibition in section 572.054(b) applies, however, if the former employee participated in any way in the matter at issue.