

FILED

2015 DEC 28 PM 2:30

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

Ana Valencia
DEPUTY

1 BIRGIT FLADAGER
2 District Attorney
3 Stanislaus County
4 832 12th Street, Suite 300
5 P.O. Box 442
6 Modesto, CA 95353
7 Telephone: (209) 525-5550
8 Facsimile: (209) 558-4027

9 Attorney for the Plaintiff

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

FRANK CLIFFORD CARSON,
BALJIT ATWAL,
DALJIT ATWAL,
WALTER WESTLEY WELLS,
GEORGIA DEFILIPPO,
CHRISTINA DEFILIPPO,
EDUARDO QUINTANAR AND
SCOTT MCFARLANE,
Defendants.

CASE NO.: 1490969

MEMORANDUM OF POINTS AND
AUTHORITIES SUPPORTING
RELEASE OF DEFENDANT
CARSON'S TAX RETURNS

Date: December ²⁹28, 2015
Time: 10:00 a.m.
Dept. 26

The Honorable Barbara Zuñiga

-----o0o-----

I. Introduction

The People provide the court with the following Memorandum of Points and Authorities in support of the release of the tax returns for defendant Carson based on Count IV, Perjury, as alleged.

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. Memorandum of Points and Authorities

Law and Argument

A. There Is No Recognized Federal or State Constitutional Right to Maintain the Privacy of Tax Returns

(*Weingarten v. Superior Court* (2002) 102 Cal.App.4th 268, 274.)

[N]o confidential accountant-client privilege exists under federal law, and no state-created (*sic*) privilege has been recognized in federal cases, *Falsone v. United States*, 205 F.2d 734 (CA5 1953), cert. denied, 346 U.S. 864, 74 S.Ct. 103; *Gariepy v. United States*, 189 F.2d 459, 463—464 (CA6 1951); *Himmelfarb v. United States*, 175 F.2d 924, 939 (CA9 1949), cert. denied, 338 U.S. 860, 70 S.Ct. 103; *Olender v. United States*, 210 F.2d 795, 806 (CA9 1954). **Nor is there justification for such a privilege where records relevant to income tax returns are involved in a criminal investigation or prosecution.** In *Boyd* [*v. United States* (1886) 116 U.S. 616] a pre-income tax case, the Court spoke of protection of privacy, 116 U.S., at 630, 6 S.Ct., at 532, but there can be little expectation of privacy where records are handed to an accountant, knowing that mandatory disclosure of much of the information therein is required in an income tax return. What information is not disclosed is largely in the accountant's discretion, not petitioner's. Indeed, the accountant himself risks criminal prosecution if he willfully assists in the preparation of a false return. 26 U.S.C. s 7206(2). His own need for self-protection would often require the right to disclose the information given him.

(*Couch v. U.S.* (1973) 409 U.S. 322, 335.) (Emphasis added.)

The Court in *Weingarten* recognized the California Courts have “interpreted state taxation statutes as creating a statutory privilege against disclosing tax returns.” (*Weingarten, supra.*)

Cal. Revenue & Tax Code, § 19542, provides,

Except as otherwise provided in this article and as required to administer subdivision (b) of Section 19005, it is a misdemeanor for the Franchise Tax Board or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions), or any former officer or employee or other individual, who in the course of his or her employment or duty has or had access to returns, reports, or documents required to be filed under this part, to disclose or make known in any manner information as to the amount of income or any particulars (including the business affairs of a corporation) set forth or disclosed therein.

However, the California Supreme Court has found the above privilege is not absolute, allowing for disclosure, where (1) the circumstances indicate an intentional waiver of the privilege; (2) the gravamen of the lawsuit is inconsistent with the privilege; or (3) a public policy greater than

1 that of the confidentiality of tax returns is involved. (*Weingarten, supra* citing *Schnabel v. Superior*
2 *Court*, (1993) 5 Cal.4th 704, 721.) In *Weingarten*, the appellate court disagreed with the trial court
3 that an attempt to ensure proper punitive damages were assessed to the defendant was a public
4 policy that was greater than that of confidentiality of the tax returns. *Id.* Yet, the Court of Appeals
5 found that the disclosure was favored as defendant had breached her duties as a corporate officer
6 and acted with malice and fraud. *Id.*

7 In *People v. McLemore*, the Court of Appeals reviewed the Ninth Circuit's decision in
8 *United States v. Carlson* (9th Cir.1980) 617 F.2d 518, 523 wherein the court held that the "Fifth
9 Amendment privilege did not warrant its application to shield a patent tax evasion scheme." (*People*
10 *v. McLemore* (1985) 166 Cal.App.3d 718, 720.) In *McLemore*, the court was faced with a defendant
11 claiming the privilege for tax returns where he stood charged with violations of failure to file state
12 tax returns.

13 Here, defendant is charged with a violation of Penal Code section 118, Perjury, based on
14 his Misrepresentation on Form 700. The public policy here, similar to *Weingarten and McLemore*,
15 is substantially greater than the confidentiality of the returns.
16

17 B. There Is No Attorney-Client Privilege when a Crime Is Involved

18 Evidence Code §956 proclaims, "There is no privilege under this article if the services of
19 the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit crime or
20 a fraud." *BP Alaska Exploration Inc. v. Superior Court* (1988) 199 Cal.App.3d 1262, specifically
21 held, "Evidence Code section 956 does not require a completed crime or fraud."
22

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the foregoing reasons the People respectfully request the Court to allow the release of defendant's tax returns.

Dated this 28th day of December 2015, at Modesto, California.

Respectfully submitted,

BIRGIT FLADAGER
District Attorney



Marlisa A. Ferreira
Chief Deputy District Attorney

MAF:vav

PROOF OF SERVICE BY ELECTRONIC MAIL AND FACSIMILE

STATE OF CALIFORNIA)
COUNTY OF STANISLAUS)

I, the undersigned, declare as follows:

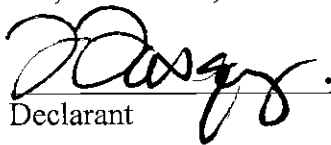
That I am over the age of 18 years and am not a party to this action and I am employed by the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.

That I served a copy of the **People's Memorandum of Points and Authorities Supporting Release of Defendant Carson's Tax Returns** on December 28, 2015 pursuant to California Code of Civil Procedure section 1010.6(a)(6) by electronically sending a copy thereof to the offices of Timothy Rien at rienlaw@sbcglobal.net, Martha Carlton-Magana at carltnm@hotmail.com, Preciliano Martinez at attymartinezp@yahoo.com, Hans Hjertonsson at Hans.hjertonsson@gmail.com, Alonzo Gradford at gradfordlaw@gmail.com, Lawrence Niermeyer at lniermeyer@aol.com, Robert Lee Forkner at RLFCrimLaw@aol.com, Bruce Perry at brucerperry@msn.com and Stephanie Mitchell at stephanie.mitchell@stanct.org.

That I served a copy of the **People's Memorandum of Points and Authorities Supporting Release of Defendant Carson's Tax Returns** on December 28, 2015 via facsimile to Jesse Garcia at the number of (510) 887-0646 on December 28, 2015. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of December 2015, at Modesto, California.


Declarant

Case No. 1490969
People v. Carson et al.
Dept. 26

TRANSMISSION VERIFICATION REPORT

TIME : 12/28/2015 14:11
NAME : STAN CO DA MAIN
FAX : 2095584027
TEL :
SER. # : BROK9J989673

DATE, TIME	12/28 14:10
FAX NO. /NAME	915108870646
DURATION	00:01:04
PAGE(S)	06
RESULT	OK
MODE	STANDARD ECM



OFFICE OF THE
DISTRICT ATTORNEY

Stanislaus County
832 12th Street, Suite 300
Modesto, CA 95354

Mailing address: P.O. Box 442, Modesto, CA 95353
Telephone: (209) 525-5550 Fax: (209) 558-4027

Birgit Fladager
District Attorney

Chief Deputy District Attorneys

Dave Harris
Doug Raynaud
Annette Rees
Marlisa Ferreira

FAX TRANSMITTAL

Date: 12/28/2015 Time:
To: Jesse Garcia
Fax: 510-887-0646 Phone:
Re: Case No. 1490969 // **People's Memorandum Points and Authorities Supporting Release of Defendant Carson's Tax Returns**
Sender: V. Vasquez Phone 209-525-5524

YOU SHOULD RECEIVE 10 PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 209-525-5550.

Comments:

Good Afternoon,
Please find attached the People's Memorandum Points and Authorities Supporting Release of Defendant Carson's Tax Returns.

Thank you