

Request No. 12: Personal tax returns for all years from 2002 through the present.

Response to Request Numbers : Defendant is asserting specific legal objections to the production request as well as his U.S. constitutional privileges. I intend to produce all relevant documents regarding this lawsuit, however, my attorneys have counseled me that at the present time I cannot select, authenticate, and produce documents relevant to this lawsuit without waiving my Fifth Amendment constitutional rights and I must accept this advice or risk losing my Sixth Amendment right to effective representation. Accordingly, I assert my federal constitutional rights under the Fifth, Sixth, and Fourteenth Amendments as guaranteed by the United States Constitution. Drawing an adverse inference under these circumstances would unconstitutionally burden my exercise of my constitutional rights, would be unreasonable, and would therefore violate the Constitution; overly broad.

As set forth in more detail in DE 282 and 283, which were provided to the court in camera, Epstein cannot provide answers/responses to questions relating to his financial history and condition without waiving his Fifth, Sixth, and Fourteenth Amendments as guaranteed by the United States Constitution, which includes his tax returns. Asking for Epstein's personal tax returns is financial in nature and it is confidential, proprietary and seeks information that is neither relevant to the subject matter of the pending action nor does it appear to be reasonably calculated to lead to the discovery of admissible evidence. Moreover, the Magistrate has not made a ruling on relevancy as to the personal tax returns, and the Plaintiff has not met the burden of establishing a "compelling need" for the tax returns.

Responding to the above financial request would require Epstein to identify information regarding matters as set forth in more detail in DE 282 and 283, which were provided to the Court in camera. Producing the specified information, in full, would result in testimonial disclosures that would communicate statements of fact. Again, the information sought relates to potential federal claims of violations. See DE 282 and 283,

in camera. Production would therefore constitute a testimonial admission of the genuineness, the existence, and Epstein's control of such records, and thus presents a real and substantial danger of self-incrimination in this case, in other related cases and as well in areas that could result in criminal prosecution. See generally Hoffman v United States, 341 U.S. at 486; United States v. Hubbell, 530 U.S. at 36 and United States v. Apfelbaum, 445 U.S. at 128.

The Court's order seems to hone in on the "required records" exception for the proposition that, as a matter of law, Epstein's personal tax returns must be produced because they are allegedly a mandatory part of a civil regulatory scheme and have assumed some public aspect. (DE 462, p.12) However, "required records" are ordinarily records collected by highly regulated business (e.g., physicians) wherein the records themselves have assumed public aspects which render them analogous to public documents. See In re Dr. John Doe, 97 F.R.D. 640, 641-643 (S.D.N.Y. 1982). Usually, these documents are known to more than the filer and the agency in which the document(s) were filed (i.e., known to other persons of the general public). Id. Even though the IRS may have certain returns, they remain confidential under 26 U.S.C. §6103 from any disclosures and are therefore different than a regulated/public record that can be accessed by the public. In Trudeau v. New York State Consumer Protection Bd., 237 F.R.D. 325 (N.D.N.Y. 2006), the court maintained that "[r]outine discovery of tax returns is not the rule but rather the exception." Id. at 331. The Court went on to note that [f]or nearly the past thirty-five years, tax returns have been considered 'confidential,' pursuant to 26 U.S.C. §6103." Id. Because of the principle of confidentiality, it further noted, "courts in the Second Circuit have found personal financial information to be

presumptively confidential or cloaked with a qualified immunity,” and must, therefore, “balance the countervailing policies of liberal discovery set forth in the Federal Rules of Civil procedure against maintaining the confidentiality of such documents.” *Id.*

To achieve that balance, courts in the Second Circuit have developed a “more stringent” standard than that set forth in the rules. To order disclosure of tax returns, a court must find that “the requested tax information is relevant to the subject matter of the action” *and* that “there is a compelling need for this information because the information contained therein is not otherwise readily available.” *Id.* The Magistrate’s Order makes no such finding in the instant matter. In fact, the burden of showing compelling need is on the party seeking discovery, but once a compelling need has been found, the party whose tax return information has been requested has the burden to “provide alternative sources for this sensitive information. *Id.* If the requested information is available from alternate sources, disclosure should not be compelled. Potential alternate sources to which the court pointed were gathering the information through deposition or disclosure in an affidavit by the requested party of net worth, wealth, and income. *Id.* at 331-32. *See Barton v. Cascade Regional Blood Services*, 2007 WL 2288035 (W.D.Wash. 2007)(“Tax returns are confidential communications between the taxpayer and the government [citing §6103] and although not privileged from discovery there is a recognized policy against unnecessary public disclosure. . . . The Court finds no compelling need which overcomes this recognized policy”). Courts have broadly construed these provisions to embody a general federal policy against indiscriminate disclosure of tax returns from any source. *Federal Sav. & Loan Ins. Corp. v. Krueger*, 55 F.R.D. 514-15 (N.D. Ill. 1972)(“it is the opinion of this court that [§6103] reflect[s] a valid public policy against disclosure

of income tax returns. This policy is grounded in the interest of the government in full disclosure of all the taxpayer's income which thereby maximizes revenue. To indiscriminately compel a taxpayer to disclose this information merely because he has become a party to a lawsuit would undermine this policy"); see also Premium Service Corp. v. Sperry & Hutchinson Co., 511 F.2d 225, 229 (9th Cir. 1975)(would have been appropriate for district court to quash subpoena for tax returns based on the "primacy" of the "public policy against unnecessary disclosure [of tax returns] arises from the need, if tax laws are to function properly, to encourage taxpayers to file complete and accurate returns").

In Pendlebury v. Starbucks Coffee Co., 2005 WL 2105024 at *2 (S.D. Fla. 2005), the court agreed that "[i]ncome tax returns are highly sensitive documents" and that courts should be reluctant to order disclosure during discovery. *Citing*, Natural Gas Pipeline Co. of Am. v. Energy Gathering, Inc., 2 F.3d 1397, 1411 (5th Cir. 1993); DeMasi v. Weiss, Inc., 669 F.2d 114, 119-20 (3d Cir. 1982)(noting existence of public policy against disclosure of tax returns); Premium Serv. Corp. v. Sperry & Hutchinson Co., 511 F.2d 225, 229 (9th Cir. 1975). The court in Pendlebury agreed that parties seeking the production of tax returns must demonstrate (1) relevance of the tax returns to the subject matter of the dispute and (2) a compelling need for the tax returns exists because the information contained therein is not otherwise available. *Id.* at *2; see also Dunkin Donuts, Inc. v. Mary's Donuts, Inc., 2001 WL 34079319 (S.D. Fla. 2001); Cooper v. Hallgarten & Co., 34 F.R.D. 482, 483-84 (S.D.N.Y. 1964). Thus, before the Court can order production of the requested returns in this matter, the Plaintiff must satisfy the "relevance" and "compelling need" standards. The Magistrate's Order fails to address

the “relevancy” standard, and the Plaintiff fails to delineate any “compelling need” or availability of networth from other sources (e.g., an Affidavit).

This court already ruled in DE 462 that Epstein is not required to produce his financial history information to the extent same seeks to identify Epstein’s assets, where such assets are located and whether such assets have been transferred. Id. Moreover, the names and addresses of his accounts, financial planners and money managers were also sustained pursuant to the Fifth Amendment. Id. Therefore, to the extent this court orders production of tax returns and to the extent Epstein’s personal tax returns contain such information, same should be redacted and subject to heightened confidentiality. However, this can only be done subsequent to an *in camera* hearing wherein this court can make a ruling on relevancy, production, redaction and confidentiality; but only after the Plaintiff shows a compelling need.

Furthermore, Epstein’s complicated business transactions have no relevancy to this lawsuit and, therefore, evidence of same should not be produced. The Fifth Amendment is a safe harbor for all citizens, including those who are innocent of any underlying offense. This request, if answered, may result in compelled production and/or testimonial communications from Epstein regarding his financial status and history and would require him to waive his right to decline to respond to other inquiries related to the same subject matter. Responding to this and other related inquiries would have the potential to provide a link in a chain of information and/or leads to other evidence or witnesses that would have the specific risk of furthering an investigation against him and therefore are protected from compulsion by Epstein’s constitutional privilege.

Accordingly, any compelled testimony that provides a “lead or clue to a source of evidence of such [a] crime” is protected by Fifth Amendment. SEC v Leach, 156 F.Supp.2d at 494. Questions seeking “testimony” regarding names of witnesses, leads to phone or travel records, or financial records that would provide leads to tax or money laundering or unlicensed money transmittal investigations are protected. See also Hoffman v United States, 341 U.S. 479, 486 (1951)(“the right against self-incrimination may be invoked if the answer would furnish a link in the chain of evidence needed to prosecute for a crime”).

c. Request Number 13

Request No. 13: A photocopy of your passport, including any supplemental pages reflecting travel to locations outside the 50 United States between 2002 and 2008, including any documents or records regarding plane tickets, hotel receipts, or transportation arrangements.

Response: Defendant asserts his U.S. constitutional privileges. I intend to produce all relevant documents regarding this lawsuit, however, my attorneys have counseled me that at the present time I cannot select, authenticate, and produce documents relevant to this lawsuit without risking waiver of my Fifth Amendment rights and I must accept this advice or risk losing my Sixth Amendment right to effective representation. Accordingly, I assert my federal constitutional rights under the Fifth, Sixth, and Fourteenth Amendments as guaranteed by the United States Constitution. Drawing an adverse inference under these circumstances would unconstitutionally burden my exercise of my constitutional rights, would be unreasonable, and would therefore violate the Constitution. In addition to and without waiving his constitutional protections and privileges, the scope of information is so overbroad that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; compiling such information over a six year period would be unduly burdensome and time consuming.