

White Collar Criminal Defense Law Advisor

A Newsletter by Budd Larner Gross Rosenbaum Greenberg & Sade, P.C.

Expungement of Tax Conviction Records

By Chrisitna Fichera-Dente, Esq. and James B. Daniels, Esq.

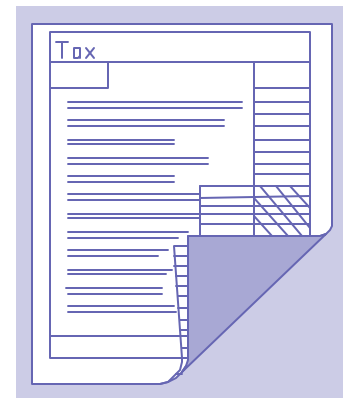
While courts rarely grant motions seeking expungement of arrest records, and even more rarely grant motions to expunge valid conviction records, a federal tax conviction may be expunged if extraordinary circumstances exist. Any application made to a court must stress unintended and uncommon specific hardships suffered by the requestor.

When determining whether circumstances exist to expunge a conviction record, a court will balance the right to privacy of the individual with the right of law enforcement officials to perform their duties, *i.e.*, the harm the criminal records causes against the public need for punishment.

Many states have statutes that govern expungement of specific convictions, *e.g.*, drug or non-violent convictions, delineating the required criteria the candidate must meet. However, no statutory authority controls expungement of federal tax-related convictions.

Expungement has been generally reserved for cases where an arrest was unconstitutional; arrest made for the purpose of harassment (such as in the case of civil rights workers); where a determination of probable cause is impossible because arrests were made *en masse*; the records have been misused by the government; or where the arrest was proper but was based on a statute that was later declared unconstitutional.

Notwithstanding, courts have recently recognized that expungement may be granted in extraordinary cir-



cumstances, even if the arrest or conviction was valid and no misconduct was involved.

For example, expungement was granted to an individual who had been convicted more than 20 years earlier of making false claims to the Social Security Administration. The defendant had been convicted under the Youthful Offender Act whose provisions allowed the defendant's conviction to be set aside if the defendant was unconditionally discharged by the sentencing court before expiration of his sentence. The requisite extreme circumstances were found to exist because the defendant had an unblemished criminal record and excellent employment history since his conviction, and the record of his conviction had caused the defendant to be fired from a new job.

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Similarly, a California court granted an expungement of criminal arrest and conviction for failure to pay tax on marijuana, under a now repealed statute, 27 years earlier. Here, the government had no interest in maintaining a record of the crime and the potential harm was considered great because the person would have lost his job supporting a family of five.

Courts have refused to expunge criminal convictions where the hardships suffered by the petitioner are intended, and there is nothing uncommon about his/her plight. For example, a court refused to expunge felony Medi-

caid fraud and tax evasion convictions because of the potential denial of membership in professional organizations.

Thus, a subsequent law abiding life does not warrant expunging criminal records absent specific harm. For example, the expungement of conspiracy to defraud and filing a false tax return convictions was denied where the sole contention was that the petitioner had suffered enough and the conviction unjustly interfered with the ability to rebuild one's life.

The following factors should be addressed when seeking expungement:

- petitioner's age
- type of conviction
- nature of conviction (circumstances surrounding etc.)
- no prior criminal history
- validity of conviction
- amount of time since conviction (greater amount of time passed – the better)
- sentence/probation completed (without incident)
- no additional criminal activity
- employment history (has the person advanced/bettered him/herself?)
- activities, if any, the individual engages in (evidence that person is "good")
- real/actual impact on current employment status or on other aspect of life
- family obligations (married with children)
- impact on and harm to individual more than the expected/intended collateral consequences, i.e., special circumstances, if any, requiring expungement
- law enforcement is not furthered by preservation of criminal record
- public is not harmed by destruction of criminal record



"There are a multitude of factors to address when seeking expungement"

Budd Lerner Gross Rosenbaum Greenberg & Sade, P.C.

150 John F. Kennedy Parkway
CN 1000
Short Hills, NJ 07078-0999

tele 973.379.4800
fax 973.379.7734
e-mail: mrmit@budd-lerner.com

Visit us on the Web:

www.buddlerner.com

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