

To: ARRB
From: Farand Kan
Re: Tax Disclosures under Reg. §301.6103(a)-1.

I. ISSUE

Under Reg. §301.6103(a)-1 and the John F. Kennedy Assassination Records Collection Act, does the Internal Revenue Service's prior disclosure of Lee Harvey Oswald's tax records to the Warren Commission permit a subsequent release of those records to the National Archives?

II. BRIEF ANSWER

Probably yes. Reg. §301.6103(a)-1 permits subsequent releases of previously disclosed tax records if the subsequent releases are in accordance with 1976 laws. A review of Reg. §301.6103(a)-1 and U.S.C. 6103 as effective in 1976 indicate that a subsequent release is permissible, upon official request of the head of any Federal agency.

III. FACTS

IV. DISCUSSION

1. 26 U.S.C. 6103.

The JFK Assassination Records Collection Act takes precedence over any other law except Section 6103 of the Internal Revenue Code [26 U.S.C. 6103]. 44 U.S.C. 2107-11(a). Section 6103 indicates that tax returns and tax return information "shall be confidential." 26 U.S.C. 6103(a) (general rule). But Section 6103 does not forbid all disclosures of tax records, and specifies several exceptions to the general rule of confidentiality. See 26 U.S.C. 6103 (c-p) (attached). Although the JFK Assassination Records Collection Act cannot bypass the framework of Section 6103 to obtain tax records, and Section 6103 was singled out as an area of law where the Records Collection Act is subject to regulation, it appears that any authorization located within Section 6103 will permit the release of records. In particular, authorization may be warranted through the provisions of Reg. §301.6103(a)-1, which deal with exceptions to confidentiality regarding the release of previously disclosed tax records.

2. Reg. §301.6103(a)-1.

Reg. §301.6103(a)-1 provides that tax returns and tax return information disclosed to a Federal agency prior to the enactment of the Tax Reform Act of 1976, for purposes not involving tax administration, may be subsequently released "pursuant to the authority of Section 6103... before amendment of such section by section 1202 of the Tax Reform Act of 1976." Reg. §301.6103(a)-1(a) (general rule) (attached). The release of Lee Harvey Oswald's records to the Warren Commission seems to constitute an authorized prior disclosure as defined by Reg.

§301.6103(a)-1. See 26 U.S.C. 6103(b) (“Federal agency,” “tax administration,” “return,” and “return information” defined). If such prior disclosure does subject Oswald’s tax records to the provisions of Reg. §301.6103(a)-1, “return and return information so disclosed by the authority of prior law... may, with one restriction^[1], be disclosed after December 31, 1976 by such agency for any purpose authorized by such prior law.” 45 FR 65564 (1980).

3. 26 U.S.C. 6103 (prior to the Tax Reform Act of 1976).

The prior law of 26 U.S.C. 6103 (1976) provided that all tax returns “shall constitute public records,” and that such records “shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President.” 26 U.S.C. 6103 (1976).

QUESTIONS YET UNANSWERED.

1. The current regulation only refers to Section 6103 before amendment. Can we infer that regulations before amendment are also valid?
2. Fact section?
3. Extent of disclosure seems important. Should I investigate?

¹ Reg. §301.6103(a)-1 provides an exception to the rule of subsequent releases for previously disclosed tax information, when pertaining to “an administrative or judicial proceeding... described in section 6103(i)(4) of the Code.” Reg. §301.6103(a)-1(b) (Exception). This exception deals exclusively with “judicial or administrative proceeding[s] pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture” and does not seem to encompass the Oswald tax record disclosures. See U.S.C. §6103(i)(4) (attached).