

TJG DRAFT  
1/16/97

VIA FACSIMILE AND FIRST-CLASS MAIL

January 16, 1997

Donald Squires, Esq.  
Office of Chief Counsel, Disclosure Litigation  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20535

Re: John F. Kennedy Assassination Records Collection Act of 1992 and Internal Revenue Code, Section 6103

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Dear Mr. Squires:

In anticipation of the upcoming meeting on January 22, 1997, I thought it would be appropriate to share with you our preliminary analysis regarding the confidentiality of Section 6103 records and the impact of the Assassination Records Review Board's authority under The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. V 1994) ("JFK Act"). The Review Board has asked to examine all tax returns of Lee Harvey Oswald, as well as any joint returns of Mr. Oswald and Mrs. Marina Oswald from 1962 and 1963. See Letter from David G. Marwell to Donald Squires, December 16, 1996. We understand that these records fall under Section 6103 of the Internal Revenue Code. Accordingly, this letter sets forth our preliminary legal analysis for the Review Board's right to conduct a confidential inspection of these records.

We know that you are personally familiar with the JFK Act and that you were involved with legislative analysis when the Act, including Section 11(a) "Precedence over other law," was under consideration. On our part, we are aware of the important public policy issues regarding confidentiality of tax return records that fall within Section 6103.

Under our preliminary analysis of the JFK Act, we believe that the Review Board is empowered to inspect *all* IRS records coming within the scope of "assassination records" as defined by the Act and by the Board's guidelines published at 36 CFR 1400. However, we also recognize that the JFK Act does not permit transfer to the National Archives of assassination records that are tax return records under Section 6103. In short, we believe the Board has the full right to inspect relevant 6103 records, but those records need not be transferred to the National Archives or otherwise be made available to the public. This letter sets forth our preliminary legal analysis of these issues and our

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basis for asserting our right to conduct a confidential inspection of the records.

Later-enacted statutes supersede prior-enacted statutes when the relevant terms of the statutes are inconsistent. The canons of statutory construction provide that whenever two statutes contain inconsistent provisions, the latter-enacted statute prevails in relevant part over the prior-enacted statute. *Sutherland* articulates this position as follows: “When two statutes are repugnant in any of their provisions, the later act operates to the extent of the repugnancy to repeal the first.” 1A Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 23.09 (5th Ed. 1992). The Supreme Court has consistently adopted this approach. See *United States v. Yuginovich*, 256 U.S. 450, 463 (1921) (“It is . . . well settled that a later statute repeals former ones when clearly inconsistent with the earlier enactment.”). [other cases?]. The D.C. Circuit similarly adheres to this doctrine. [any cases?].

Therefore, to the extent that IRC Section 6103 conflicts with any provision of the JFK Act (except Section 11(a)), the JFK Act would prevail.<sup>1</sup>

The JFK Act clearly provides that the Review Board is entitled to examine records and to request relevant information from all government agencies. Sections 5 and 7 of the JFK Act explicitly authorize the Review Board to inspect all assassination records. For example, the JFK Act broadly empowers the Review Board to “direct a Government office to make available to the Review Board . . . additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under [the JFK Act.]” 44 U.S.C. § 2107.7(j)(B)(ii). See also, 44 U.S.C. § 2107.5(c)(2)(H) (Government agencies “shall . . . make available to the Review Board any additional information and records that the Review Board has reason to believe it requires. . .”). These provisions do not make exception for records protected by section 6103.<sup>2</sup>

Section 11(a) is the only provision of the JFK Act that limits the authority of the Review Board with respect to assassination records held by other Government agencies. The sole provision of the JFK Act that provides for a different treatment of IRS records is Section 11(a):

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<sup>1</sup>It is our understanding that the most recent amendment to 6103 occurred in 19\_\_, whereas the JFK Act was enacted on October 26, 1992, and received technical amendments on October 6, 1994.

<sup>2</sup>The Review Board’s interpretation of any ambiguities in the JFK Act is entitled to substantial deference under the rule of *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), provided that the interpretation is “a permissible construction of the statute.” *Id.* at 843.

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When this act requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law (except section 6103 of the Internal Revenue Code . . .).

44 U.S.C. § 2107.11(a). Section 11(a), the only provision that circumscribes the Review Board's authority regarding IRS assassination records, thus applies only to the circumstance where records would otherwise be made public or be transferred to the National Archives. Therefore, Section 11(a) does not restrict, in any way, the authority of the Board to conduct a confidential examination of the tax returns that have been requested.

Therefore, it appears to us that the JFK Act authorizes the Review Board to *review* IRS records protected by section 6103 so long as they are not transmitted to the Archivist or publicly disclosed. We very much look forward to receiving your response to this letter and your discussion of the relevant law.

Thank you for your continuing cooperation with our work.

Sincerely,

T. Jeremy Gunn  
General Counsel

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