

January 10, 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:

This letter sets forth the legal position of the Assassination Records Review Board (Review Board) with respect to the inspection of assassination records that may be within the custody of the Internal Revenue Service (IRS). In our December 16, 1996, letter to you, we requested to confidentially inspect IRS assassination-related records, recognizing that section 11(a) of the *John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. § 2107 (Supp. V 1994) (JFK Act) does not permit the public release of tax return records that fall under section 6103 of the Internal Revenue Code (IRC). Nonetheless, the Review Board believes that a confidential inspection of such records is compatible with the restrictions set forth in section 11(a). The purpose of this letter is to explain the Review Board's legal interpretation of the JFK Act as it relates to section 6103.

Sections 5 and 7 of the JFK Act explicitly authorize the Review Board to inspect 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.

Rather, section 6103 only takes precedence over the JFK Act with respect to "transmission of a record to the Archivist or public disclosure . . ." 44 U.S.C. § 2107.11(a). In all other respects, the more recently enacted JFK Act takes precedence over section 6103.

Donald Squires, Esq.  
January 10, 1997  
Page 2

General principles of statutory construction instruct that later enacted laws prevail over clearly conflicting earlier enacted laws.<sup>1</sup> Congress enacted the JFK Act in 1992, whereas it enacted section 6103 of the IRC in 1954 (need to check. I think 1954, with relevant amendments in 1976.) Thus, as a general rule, where the two statutes are clearly inconsistent, the JFK Act will prevail.

The JFK Act, therefore, 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. Clearly, sections 5 and 7 of the JFK Act empower the Review Board to review IRS records without any reference to section 6103 barring such review. Since Congress did not intend both to enable the Review Board to review IRS records *and* to prohibit the Review Board from reviewing IRS records under section 6103, we apply the later enacted statute -- the JFK Act. *And, because section 11(a) is triggered only when assassination records are transmitted to the Archivist or publicly disclosed, section 11(a) does not affect the Review Board's power to inspect records of the IRS.* Thus, the IRS must make its records available for review to the Review Board staff.

In the event that your office questions some aspect of the above analysis, the Review Board's interpretation of any ambiguities in the JFK Act is entitled to deference under the rule of *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

Accordingly, even if the JFK Act were thought to be "ambiguous" regarding its authority to review IRS records, the Review Board's interpretation must be given effect as long as it is "a permissible construction of the statute." *Chevron*, 467 U.S. at 843.

If, after review of this letter, IRS still maintains that it cannot make certain of its records available for our review, we respectfully request an opinion letter that sets forth the legal basis for IRS' position.

Thank you for your continuing cooperation with our work.

Sincerely,

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<sup>1</sup>1A Norman J. Singer, Sutherland Statutes and Statutory Construction § 23.09 (5th Ed. 1992) ("When two statutes are repugnant in any of their provisions, the later act operates to the extent of the repugnancy to repeal the first."), *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.").

Donald Squires, Esq.  
January 10, 1997  
Page 3

T. Jeremy Gunn  
General Counsel

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