

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 in the custody of a Federal agency. 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.

General principles of statutory construction instruct that later enacted laws prevail over clearly

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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.

Section 11(a) of the JFK Act restates this general rule of statutory construction, emphasizing that where the JFK Act's disclosure provisions conflict with anti-disclosure laws (e.g. Privacy Act, exemptions to the Freedom of Information Act), the JFK Act takes precedence. In section 11(a), Congress included only one exception to the general rule: Where the JFK Act's *disclosure* provisions conflict with the IRC's *anti*-disclosure provision -- section 6103 -- section 6103 prevails. Thus, when the JFK Act requires transmission to the Archivist or public disclosure, it does not take precedence over section 6103. With regard to all other provisions in the JFK Act, the JFK Act, as the later enacted statute, takes precedence over section 6103.

The Review Board's interpretation of the JFK Act, then, allows the Review Board to *review* IRS records protected by section 6103, but not to transmit to the Archivist or to publicly disclose those records. Clearly, sections 5 and 7 of the JFK Act empower the Review Board to review IRS records.

Conversely, section 6103 of the IRC prohibits the Review Board from reviewing IRS records. 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, 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 this analysis.* 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).

*Chevron* established a two-step methodology for judicial review of an agency's statutory interpretation:

When a court reviews an agency's construction of the statute which it administers, it is

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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.").

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confronted with two questions. First, always, is the question of whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter. . . . If, however, the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

*Id.* at 842-43.

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 reasonable.

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 your understanding of the basis for your refusal.

Thank you for your continuing cooperation with our work.

Sincerely,

T. Jeremy Gunn  
General Counsel

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File 4.6.4

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alternative ¶ to paragraph 3

Section 11(a) of the JFK Act carves out a niche of protection for information covered by § 6103 -- namely, that the JFK Act does not require § 6103-protected information to be transmitted to the Archivist or publicly disclosed. Section 11(a) does not, however, exempt § 6103-protected information from any of the *other* provisions of the JFK Act. Thus, section 11(a) leaves intact the general rule of statutory construction, which is that later enacted laws take precedence over conflicting earlier enacted laws.