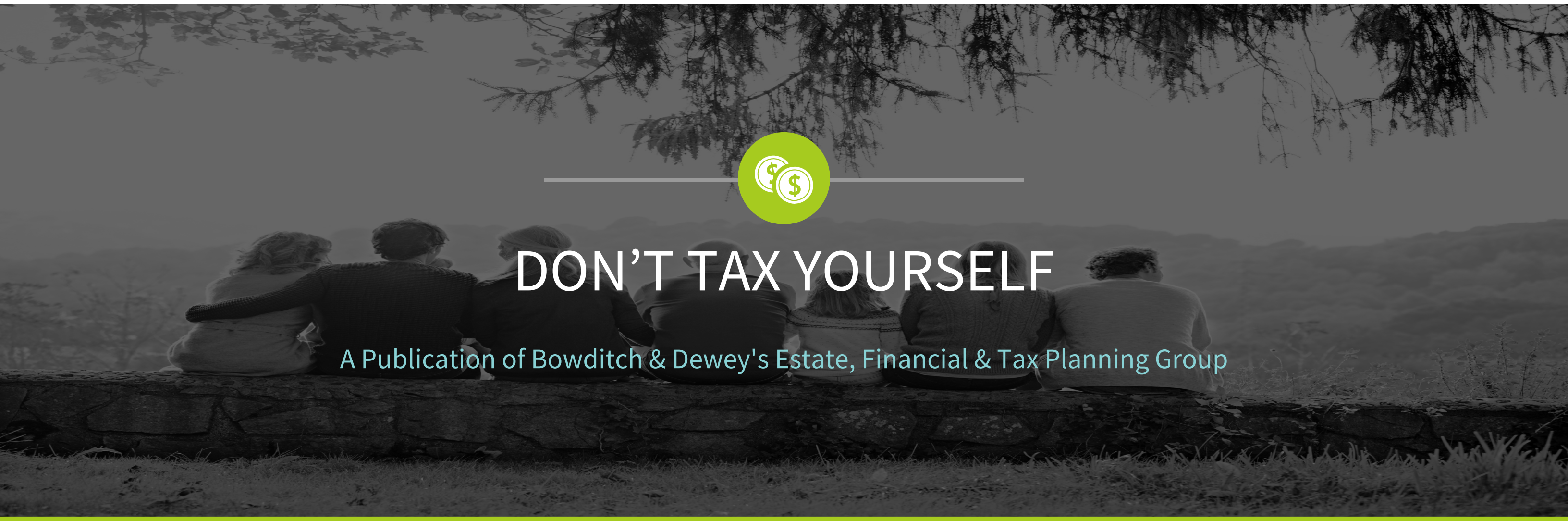

A (Howard) Stern Reminder on Taxpayer Information Confidentiality

BY JON BAROOSHIAN • FEBRUARY 28, 2017

Howard Stern fans are accustomed to hearing the satellite radio personality rant about the federal government. Now, in an unusual twist of fate, Stern and the federal government are on the same side of a lawsuit that highlights not only the importance of maintaining confidentiality of taxpayer information, but also how easy it is to disclose confidential information accidentally or intentionally. And there are some pretty stiff civil and criminal penalties associated with such a disclosure – intentional or not.

Earlier this month, a Massachusetts woman sued the IRS, Howard Stern, and Stern’s production company for invasion of privacy and negligence. In a complaint filed in U.S. District Court last week, Massachusetts resident Judith Barrigas claims that her identity, the existence of an outstanding tax liability, and tax return information were aired on the Howard Stern Show, which is broadcast to 1.2 million listeners via Sirius XM satellite radio.

Apparently, Ms. Barrigas called the IRS attempting to resolve some confusion about her tax liabilities and was speaking with agent Jimmy Forsythe. What Ms. Barrigas apparently didn’t know was that Forsythe called in to the Howard Stern show and was waiting on hold to talk to Howard. Unfortunately for Ms. Barrigas, Howard picked up Forsythe’s call while they were still speaking and at least a portion of their conversation could be heard over the air.

The complaint alleges that Ms. Barrigas suffered and continues to suffer both financially and physically. Most people would agree that having one’s tax matters and personal information broadcast over the radio for anyone listening to hear would not only be quite embarrassing, but could also help someone steal one’s identity.

Both Massachusetts and the federal government have strict laws that prohibit disclosure of taxpayer return information by the government. For example, Section 6103 of the Internal Revenue Code (“IRC”) prohibits government employees from disclosing tax returns or return information except in situations that are carefully spelled out in the statute and corresponding regulations. Generally speaking, return information includes a taxpayer’s identity, the nature, source, or amount of his income, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, deficiencies, and other financial data.

An unauthorized and willful disclosure of return information by government employees is a felony pursuant to IRC §7213 that is punishable by up to five years in prison and/or up to a $5,000 fine. It is also a crime for government employees to inspect a tax return without authorization, punishable by up to one year in prison and/or up to a $1,000 fine.

Tax return preparers are also subject to criminal penalties for the knowing or reckless disclosure of return information or for using such information for purposes other than preparing returns. A violation of IRC §7216 could result in a prison for up to one year and/or up to a $1,000 fine. IRC §6713 imposes a civil penalty of $250 on return preparers who disclose any information furnished to him for the preparation of a return, or uses any such information for any purpose other than to prepare the return. Imposition of the penalty under IRC §6713 does not require that the disclosure be knowing or reckless as it does under IRC §7216.

Massachusetts has similar statutes prohibiting disclosure of tax return information. Massachusetts General Laws Chapter 62C §21 prohibits the disclosure tax returns and return by any employee of the Commonwealth, as well as by any municipal employee, to any person but the taxpayer or his representative. And §21B imposes criminal penalties of up to $1,000 per return, document, or taxpayer, to be determined by the court, or by imprisonment for up to 1 year, or both for the unauthorized willful inspection of information contained in a return or document filed with the Massachusetts Department of Revenue.

Individuals in Massachusetts also have a statutory right to privacy that is codified in General Laws Chapter 214 section 1B. To prevail on a claim alleging an invasion of privacy, however, a plaintiff must prove that there was a gathering and dissemination of highly personal or intimate information that resulted in an unreasonable, substantial or serious interference with his privacy.

Judith Barrigas' tax disclosure incident serves as a stern reminder of the wide array of tax disclosure laws covering IRS agents, DOR employees and private tax professionals. Privacy and security should be at the forefront for any individual handling the taxes of others. Actively avoiding unintentional disclosure is particularly important in a modern office environment where workers are surrounded by a staggering number of electronic communication devices.