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# Tax Payments and Statute Waivers Voided by Duress

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Wood and Shapiro discuss how courts have developed and applied the concept of duress. Courts have used a broad definition to prevent tax authorities from coercing payment of illegal taxes and improperly obtaining extensions of the statute of limitations.

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Chief Justice John Marshall said the "power to tax involves the power to destroy."[1] More than a century later, Justice Felix Frankfurter clarified that the "power to tax is the power to destroy only in the sense that those who have power can misuse it."[2] But collecting taxes involves a delicate balance. It is hard to possess the power to collect tax without also having the potential for abuse.

Our federal tax system has long suffered from pendulum swings. It must collect revenue but must be careful about how it treats the public. Sometimes Congress becomes concerned that the IRS is not collecting enough taxes. At other times, Congress and the courts are concerned with the IRS's ability to force taxpayers to bend to its will.

Attention to the potential abuse of taxpayers has come in repeated waves over the last several decades. In 1979 the IRS created a taxpayer ombudsman position. In 1988 Congress codified this position as the taxpayer advocate, as part of the Omnibus Taxpayer Bill of Rights.[3] This bill also provided enhanced procedural protections for taxpayers and allowed civil damages for improper collection activities by the IRS.[4]

A decade later, President Clinton signed the Internal Revenue Service Restructuring and Reform Act of 1998, which contained several new protections for taxpayers.[5] For example, the bill introduced sections 6320 and 6330 to the code, which provide taxpayers the opportunity for collection due process hearings to challenge enforced collection efforts.[6] The IRS targeting scandal of 2013 has once again renewed the public clamor for protections against the threat of abusive IRS actions, and further reforms may follow.[7]

Most U.S. taxpayers have at least some fear of the IRS. Some of it is caused by the fact that an audit usually means writing a check. But some is clearly rooted in the notion that the vast powers of the IRS may occasionally be abused. The targeting of political groups in recent years by the IRS echoes Nixon's "dirty tricks" and shows that concerns remain about IRS abuse.

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[1]*McCulloch v. Maryland*, 17 U.S. 316 (1819).

[2]*Murdock v. Pennsylvania*, 319 U.S. 105, 136 (1943) (Frankfurter, J., dissenting).

[3]H.R. 4163; *see* Leandra Lederman, "Of Taxpayer Rights, Wrongs, and a Proposed Remedy," *Tax Notes*, May 22, 2000, p. 1133.

[4]Sections 7432 and 7433.

[5]P.L. 105-206, section 1102.

[6]Leslie Book, "The New Collection Due Process Taxpayer Rights," *Tax Notes*, Feb. 21, 2000, p. 1127 at 1132, n.30 ("Changes to the burden of proof in tax cases substantively did little but were important and worth enacting because of the perception that under prior law criminal defendants enjoyed a presumption of innocence and taxpayers were presumed 'guilty' in dealings with the IRS.").

[7]Karlyn Bowman, "Public Attitudes About the IRS," *Tax Notes*, July 15, 2013, p. 261 (comparing targeting scandal with 1997, when IRS favorability ratings were at their lowest ever (20 percent) in the midst of the Roth hearings on IRS abuses).

Congress has not been shy to express those concerns. For example, in 1993 Congress offered restaurants an incentive to report on employee tips, in the form of a nonrefundable tax credit on FICA taxes paid.[8] This permitted restaurants to offset FICA paid on employee tips on a dollar-for-dollar basis against their income tax liability.[9] The IRS expanded its voluntary tip reporting program to allow a restaurant to promise accurate tip reporting procedures in return for an IRS promise to base FICA tax liability on reported tips alone.

However, in 1998 Congress was particularly worried that the IRS might try to pressure restaurants into tip reporting program agreements. Congress passed a special law forbidding the IRS from ''threatening to audit'' a restaurant in order to ''coerce'' it to enter the program.[10] Such a provision would be almost unheard of in a nontax bill.

The courts have also expressed concern about IRS bullying. Judges have been keen to step in when the taxing authorities coerce compliance through undue pressure or duress. Duress in this context may consist of the forced payment of illegal taxes, or coerced waivers of the IRS statute of limitations so that the taxes can be collected later than lawfully allowed. In both cases, courts have adopted a liberal standard of implied duress, in which taxpayers can be victims of intimidation even if there is no express threat of illegal action.

**Refunds of Payments Made Under Duress**

Given that power can be abused in any government agency, it should be no surprise that sometimes convictions must be reversed, monies collected must be refunded, and damage caused must be remedied as best it can. Fortunately, these circumstances are rare. Perhaps as a result, even some tax attorneys may be surprised to know that the Constitution can require the government to refund taxes paid under duress.

What constitutes duress in the tax setting is understandably malleable. It is even necessary for courts to evaluate characteristics that are as nebulous as a taxpayer's state of mind or sophistication. Those factors, with or without extrinsic evidence of coercion and illegal threats, can play a role in determining whether a taxpayer is a victim of duress. The tax law is rarely so touchy-feely, but it is precisely the sensitive nature of duress and its objective and subjective manifestations that must be considered for there to be a check on the tax collector's power.

In a 1920 case involving property taxes on Native American land, *Ward v. Love County*,[11] the Supreme Court required the refund of taxes paid under protest and duress to the state of Oklahoma. Notably, this refund was required even though state law did not permit a refund.[12] The taxes should never have been assessed in the first place, the Court held.

Axiomatically, therefore, the state could not retain the payments. Under common law, taxpayers could recover illegal taxes paid if they had paid involuntarily and not merely under protest.[13] The *Ward* decision turned this common law doctrine into a broader constitutional concern.

In later decisions, the Court continued to find that taxpayers who paid taxes under duress were due refunds.[14] In effect, illegally collected monies must be disgorged. In *Carpenter v. Shaw*,[15] a group of Choctaw and Chickasaw Indians alleged that they had paid a state tax under duress. They had done so, they claimed, to prevent various forms of enforced collection.

It was undisputed that the taxpayers had paid the tax at an incorrect time and thus were not entitled to a refund under state law. The Supreme Court, however, held that ''a denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion is itself in contravention of the Fourteenth Amendment.''[16]

**When Payment Is Under Duress**

It is easy to recognize that tax collectors may go too far. Deciding exactly how far is too far is where

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[8]Omnibus Budget Reconciliation Act of 1993.

[9]Section 45B.

[10]Internal Revenue Service Restructuring and Reform Act of 1998. It adds that any coercion used to force a restaurant to enter such a program (often unpopular with employees) would conflict with the views of members of Congress and IRS officials, who have said that a restaurant should not be held responsible for its employees' failure to report all their tips as income. *See, e.g.*, letter from members of Congress to then-Treasury Secretary Lloyd Bentsen, *Highlights & Documents*, Mar. 4, 1994, p. 3913.

[11]253 U.S. 17 (1920).

[12]*Id.* at 24.

[13]*See Chesebrough v. United States*, 192 U.S. 253, 259 (1904); Fred Foss Lawrence, *A Treatise on the Substantive Law of Equity Jurisprudence*, section 730, at 817 (1929); Note, ''Clarifying Comity: State Court Jurisdiction and Section 1983 State Tax Challenges,'' 103 *Harv. L. Rev*. 1888, 1901, n.98 (1990).

[14]*Broadwell v. Board of County Commissioners of Carter County*, 253 U.S. 25 (1920) (holding for Choctaw and Chickasaw Indians in ''proceeding to recover moneys charged to have been paid under compulsion . . . on allotted lands which were nontaxable''); *Carpenter v. Shaw*, 280 U.S. 363, 369 (1930) (prohibition on injunctive relief outweighed by the fact that ''tax was paid under duress and compulsion to prevent the issue of respondent's warrant for its collection, to prevent the stopping by respondent of further royalty payments to them, and to prevent the accumulation of statutory penalties'').

[15]*Carpenter*, 280 U.S. at 369.

[16]*Id.*



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things get tricky. Determining exactly when duress is present can be difficult and requires resort to both objective and subjective criteria. One could imagine that *Ward* and *Carpenter* (both involving Native American land or rights) might have been decided differently on this very issue.

Indeed, the Supreme Court could have required evidence that there were actual threats and undue pressure applied to the taxpayers. Rather, in *Ward*, the Court used a definition of duress that included implied duress and reasoned that "serious disadvantage" to a taxpayer who refused to pay the tax was enough to find coercion.[17] This approach to duress has also been used in other Supreme Court cases.

In *Gaar, Scott & Co. v. Shannon*,[18] the Court held that payment of an illegal tax to avoid a 25 percent penalty and the loss of a license was involuntary and must be refunded. In *Union Pacific Railroad Co. v. Public Service Commissioner*,[19] the Court similarly found that a fee was paid under duress because it was a "commercial necessity" to obtain a required certificate for issuing bonds.[20]

Although the Supreme Court has fully embraced the doctrine of implied duress in the tax context, at least one state supreme court has taken a harder line against taxpayers. In *Private Truck Council of America Inc. v. Secretary of State*,[21] the Maine Supreme Judicial Court held that out-of-state truckers were not entitled to a refund of taxes paid under a Maine law that violated the commerce clause.[22] However, it did allow a return of payments made to an escrow fund established after the class action began.

The Maine court distinguished *Ward* and *Carpenter* and noted that Maine had not adopted the doctrine of implied duress.[23] The *Private Truck Council* decision observed that the taxpayers had not shown any "evidence of any arrests made or threatened, or of any actual or threatened seizure of property, because truckers refused to pay" the taxes.[24] In other words, the fact that the truckers had to pay the tax to do business was not enough to find duress as a legal and factual matter.

The *Private Truck Council* decision represents a surprisingly narrow standard for duress — far tighter than the Supreme Court and many other courts have applied.[25] It is also a standard that seems difficult to defend. To a business owner faced with certain financial ruin if an illegal tax is not paid, it is hard to say that the payment is made voluntarily.

This is true regardless of whether the tax authorities are making express threats. Moreover, the Maine Supreme Judicial Court was arguably without authority to adopt a stricter standard for duress than the U.S. Supreme Court. The U.S. Supreme Court declined to hear an appeal from *Private Truck Council*, but this does not necessarily mean the Court accepts the reasoning of the Maine court.

**Consent Obtained Through Duress**

Plainly, duress features in contract law to a far greater extent than in tax law. Contracts, leases, deeds, and many other documents can be successfully attacked in this way — even ones that do not go as far as Vito Corleone in *The Godfather* when an offer you cannot refuse is one in which your brains or your signature would soon be on a contract.

With this background of duress in contract law, it should be no surprise that in the tax setting, duress can affect many issues beyond the payment of taxes. For example, courts have held that consents to extend the statute of limitations obtained through duress are voidable. The first such case was *Diescher v. Commissioner*,[26] in which the Board of Tax Appeals held that a waiver signed under the threat of fraud penalties was invalid.

Significantly, the taxpayer in *Diescher* was represented by counsel when he signed the waiver. Nevertheless, the Board of Tax Appeals found that he was unfairly pressured into signing.[27] The taxpayer feared that if he did not sign the waiver, the IRS would proceed immediately to collect the deficiency and penalty.

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[17]Citing *Atchison, Topeka & Santa Fe Railroad Co. v. O'Connor*, 223 U.S. 280 (1912).

[18]223 U.S. 468, 471 (1912).

[19]248 U.S. 67 (1918).

[20]*Id.* at 69-70; *see also United States v. State Tax Commissioner*, 412 U.S. 363, 368, n.11 (1973) (citing *Ward* and *Atchison* and holding that tax payment needed to obtain liquor supplies was "no choice at all").

[21]503 A.2d 214 (Me. 1986).

[22]*Id.* at 218-219.

[23]*Id.* at 219 ("In Maine, without a refund statute, 'in the context of taxation, duress arises only in those situations in which taxes are paid to avoid arrest or outright seizure of personal property — in short when failure to pay produces irreparable injury.'").

[24]*Id.*

[25]*See, e.g., Broward County v. Mattel*, 397 So. 2d 457, 460 (Fla. Dist. Ct. App. 1981) (tax payment made without protest not voluntary if done to avoid forfeiture of right to do business); *Crow v. City of Corpus Christi*, 209 S.W.2d 922, 924 (Tex. 1948) (payment of taxes because of business compulsion may be recoverable when "a reasonably prudent man finds that in order to preserve his property or protect his business interest it is necessary to make a payment of money which he does not owe and which in equity and good conscience the receiver should not retain, the payment may be recovered").

[26]18 B.T.A. 353, 357-359 (1929).

[27]*Id.* at 358-359; *cf. United States v. Martin*, 274 F. Supp. 1002, 1005 (E.D. Mo. 1967) (taxpayer represented by counsel did not sign waiver under duress) ("assertion of an intention to pursue

**(Footnote continued on next page.)**



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In another case, *Robertson v. Commissioner*, the Tax Court held that an extension of the statute of limitations signed by unsophisticated taxpayers was a product of duress.[28] The taxpayers had recently collected their winnings from a lottery. Although they certainly had the financial wherewithal to fight the IRS, the Tax Court found that they were terrified that the IRS would take their house, and they had no prior experience dealing with the IRS.

The *Robertson* case is significant because it shows that wealth alone does not imply financial sophistication or ability to withstand pressure from the IRS.[29] The Tax Court noted that as ''unfair as some publicity may have been concerning the collection efforts of the Internal Revenue Service, such stories tend to put fear in the minds of taxpayers who do not understand how the system of determination and collection of taxes operates.''[30] This is an important judicial acknowledgment of the fear that the IRS has cultivated in taxpayers' minds. It seemed to bother the court in *Robertson* that the IRS could not identify any unusual circumstances that justified procuring the statute extension.

**Standards of Duress**

The Tax Court's discussion of the appropriate standard for duress in *Robertson* is particularly revealing. The IRS had urged the court to apply a state law definition of duress under which a person must be ''threatened with a wrongful act''[31] to be considered acting under duress. In effect, the IRS argued in the illegal tax payment cases that duress must be objectively demonstrated through express threats of illegal action.

The IRS's arguments were expected, as many state definitions of duress require a ''threat to do something that the threatening party has no legal right to do.''[32] Notably, in both *Diescher* and *Robertson*, the IRS was not threatening any illegal act. In fact, the IRS was merely threatening to assess and collect taxes, which it had the legal right to do.

The IRS can perhaps be forgiven for assuming that a threat to do something that is legal and permissible cannot be transformed into an instrument of duress. Yet the courts clearly see otherwise. The reason lies in the extraordinary power the IRS wields, and the corresponding anxiety — in some cases even terror — with which it imbues taxpayers.

The courts in *Diescher* and *Robertson* found that the IRS's threats were so overwhelming for these taxpayers under the circumstances that the taxpayers lacked the capacity to voluntarily sign the statute waivers. That made the consents invalid. The decisions find strong support in the nontax context, in which courts have found that threats of criminal prosecution can amount to duress.[33]

Interestingly, the *Diescher* and *Robertson* opinions do not expressly state this analogy to the long line of cases holding that a threat of criminal prosecution can spell duress. Still, the parallel seems striking. Given that many crimes involve comparatively minor liability, while many tax assessments can be financially catastrophic, a threat of prosecution is sometimes more tepid than a threat of tax assessment or collection. For many, fear of imminent assessment or collection by the IRS would be worse than fear of prosecution for all but the most serious of crimes.

Yet the Tax Court, even in holding against taxpayers who claim duress, has said that threats to take ''otherwise legal action against the taxpayer'' can constitute duress.[34] The courts are clearly not hamstringing the IRS and have no wish to do so. Indeed, the IRS can tell a taxpayer that it ''intends to

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a legal remedy is not ordinarily considered duress, and this is especially true when there is ample time for investigation and deliberation'').

[28]T.C. Memo. 1973-205, at *20 (''Revenue Agent Magerko offered petitioners a choice: i.e., execute the consent or subject your property to collection of the tax (of an unknown amount).'').

[29]*Myers v. Finkle*, 950 F.2d 165, 168 (4th Cir. 1991) (''However, the court viewed the Myers' apparent wealth as dispositive of the issue of sophistication. We disagree.''); *Kaufman v. Guest Capital LLC*, 386 F. Supp.2d 256, 265 (S.D.N.Y. 2005) (''his wealth is not synonymous with 'investment sophistication'''').

[30]*Robertson*, T.C. Memo. 1973-205, at *14.

[31]*Id.*

[32]*Wolf v. Marlton Corp.*, 154 A.2d 625 (App. Div. Super. Ct. N.J. 1959); *Griffith v. Geffen & Jacobsen P.C.*, 693 S.W.2d 724, 728 (Tex. Civ. App. 1985) (stating that a threat to bring suit does not constitute duress if the defendant has a legal right to do so); *Various Markets Inc. v. Chase Manhattan Bank N.A.*, 908 F. Supp. 459, 468 (E.D. Mich. 1995) (same); *Goode v. Burke Town Plaza*, 436

**(Footnote continued in next column.)**

S.E.2d 450, 452-453 (Va. 1993) (because the ''application of economic pressure by threatening to enforce a legal right is not a wrongful act, it cannot constitute duress''); *Disctronics Ltd. v. Disc Mfg. Inc.*, 686 So. 2d 1154, 1163 (Ala. 1996) (threatening to force defaulting debtor into bankruptcy not duress); *Simpson v. Mbank Dallas N.A.*, 724 S.W.2d 102 (Tex. App. 1987).

[33]*In Philippine Export and Foreign Loan Guarantee Corp. v. Chuidian*, 267 Cal. Rptr. 457, 466 (Cal. App. 1990) (''Another impermissible threat is a threat of criminal prosecution, which in contract as well as criminal law constitutes a plainly wrongful act and will avoid a bargain''); *Peavy v. Bank South N.A.*, 474 S.E.2d 690 (Ga. App. 1996) (''mere threats of criminal prosecution, where neither warrant has been issued not proceedings commenced, do not constitute duress. . . . The threatened prosecution must be for an act either criminal or which the party threatened thought was criminal. A mere empty threat does not amount to duress''); *Smith v. Sneed*, 638 So. 2d 1252, 1261 (Miss. 1994).

[34]*Zapara v. Commissioner*, 124 T.C. 223, 229 (2005); *see also Hall v. Commissioner*, T.C. Memo. 2013-93, at *11 (citing *Diescher* as the standard for determinations of duress); *Rutter v. Commissioner*, T.C. Memo. 1986-407 (citing *Diescher*).

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use all lawful means to assess and collect the tax'' unless that taxpayer signs an extension, and this does not generally make the consent a product of duress.[35] To a large degree, much depends on the context of the tax matter in question and on the nuances of the revenue agent's conduct.

However, to an even greater degree, the legal ramifications of the IRS's action will hinge on the taxpayer's *perception* of the threat. This subjective viewpoint is central to the duress concept, because not every person can or does react the same way to a particular stimulus. A subjective approach is used to determine if there is duress.

The courts thus must consider diverse factors, including the taxpayer's level of education and previous experiences with the IRS, in determining whether the taxpayer's actions were a product of free will.[36] The courts have typically taken into account a course of conduct that may sometimes span significant time. For example, in *Rosenbloom v. Commissioner*,[37] a consent to extend the statute of limitations was deemed ''invalid as a product of duress.''

The facts revealed that the IRS revenue agent had threatened to close the taxpayer down and ''put him out of business'' unless he consented to an extension. The agent also attempted to seize the taxpayer's office furniture and seal off his office elevator. On the facts, the court found that this kind of pressure was simply too much, and that the taxpayer could not voluntarily consent.

**No Unusual Circumstances Means No Duress**

Despite this history of court protection of taxpayers, no one should think that the road to proving duress is an easy one. IRS actions are presumptively correct, and showing that the IRS has gone too far is difficult. Moreover, in some cases, conduct that seems on its face to be suspect is viewed as insignificant by the courts.

Thus, some courts have held that statute waivers were freely given despite IRS threats to take collection action.[38] In *Shireman v. Commissioner*,[39] the Tax Court in a memorandum opinion held that no duress was present when the IRS had simply informed the taxpayer that the agency could proceed to file a lien or levy the taxpayer's property.[40] The decision seems plainly correct.

Less obviously, in *Price v. Commissioner*,[41] the taxpayer's claim of duress also failed. The Tax Court found that the revenue agent and two of his supervisors credibly denied the taxpayer's testimony that the IRS had threatened to seize his property in a ''taunting, harassing and vulgar manner.'' The court was also unconvinced that there were ''threats by innuendo'' through the supervisors' facial expressions or general demeanor.[42]

As occurs in the law of contracts, precisely what occurred and the context of the matter are quite important to whether a court will find duress to be present. Considering a point that is arguably both subjective and objective, the court in *Price* noted that the taxpayer was an ''educated person who has dealt with the IRS on numerous occasions.''[43] This factor, too, is significant.

In contrast, in *Robertson*, the taxpayers were financially unsophisticated and were therefore at a disadvantage vis-à-vis the IRS. Moreover, pressure is not universally bad. In fact, in *Jarvis v. Commissioner*,[44] the Tax Court held that informing the taxpayer that his appeal rights would be waived if he did not sign a statute waiver did not constitute duress.

The court noted that this information was both true and legal, although it clearly was designed to (and did) put pressure on the taxpayer. The Tax Court observed that if the IRS had to hold an Appeals conference without obtaining a waiver, it would be out of time to make an assessment.[45] Weighing the facts, the context, and the taxpayer's experience, the court concluded that the threat did not rise to the level of threatened fraud penalties, as in *Diescher*, or the seizure of the taxpayer's home, as in *Robertson*.

In some cases, even an inaccurate or flatly incorrect statement of the law or facts by the IRS will not dictate a finding of duress. In *Ravin v. Commissioner*,[46] the IRS incorrectly informed the taxpayer that his appeal rights would be barred if he did not sign the consent. Nevertheless, the court held that the signed waiver was not a product of duress.

Here again, facts and context are terribly important. Explaining its conclusion, the court in *Ravin*

[35]*Price v. Commissioner*, T.C. Memo. 1981-693.

[36]*See, e.g., Stanley v. Commissioner*, 45 T.C. 555, 561 (1966) (holding that the proper determination of duress was based on petitioner's ''state of mind'').

[37]T.C. Memo. 2011-140.

[38]*See, e.g., Burnet v. Chicago Railway Equipment Co.*, 282 U.S. 295, 303 (1931) (waiver signed after threat to make jeopardy assessment not invalid).

[39]T.C. Memo. 2004-155.

[40]*Id.* at *8-*9; *see also Mulford v. Commissioner*, 25 B.T.A. 238 (1932) (threat to make an otherwise legal assessment does not constitute duress).

[41]T.C. Memo. 1981-693.

[42]*Id.* at *13.

[43]*Id.*

[44]T.C. Memo. 1980-381.

[45]*Id.* at *10-*11.

[46]T.C. Memo. 1981-107.



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noted that the taxpayer was a CPA who had experience with federal tax procedure.[47] Apparently, the professional and technical sophistication of the taxpayer is a crucial factor in determining whether duress is present.

**Unlike Pornography**

Justice Potter Stewart famously observed that while hard-core pornography is difficult to define, he knew it when he saw it.[48] One might say the same for duress. In that sense, asking whether duress is present and can invalidate an IRS action can be a little like inquiring whether a worker is an independent contractor or employee.

Litmus tests on that worker status issue might even be more realistic. Duress may be present or absent regardless of whether an illegal threat is made and regardless of whether the taxpayer is represented by counsel.

In short, a finding of duress still depends on the court's evaluation of all the circumstances. And yet, the key circumstances that must be evaluated are the taxpayer's own circumstances. The nature of the IRS's coercive actions is important, but perhaps even more so is the sophistication and perception of the taxpayer. If the taxpayer in *Ravin* had been an uneducated taxpayer rather than a CPA, the decision surely would have been different. To an unsophisticated taxpayer, the IRS's erroneous threat to deny an Appeals conference if he did not sign a statute waiver would presumably have been considered duress.

Conversely, what if the taxpayer in *Robertson* had been a CPA who recently won the lottery rather than someone with little experience in dealing with the IRS? With such a different premise, that case would probably have also come out the other way. Given that the test for duress is subjective, results largely depend on the taxpayer's knowledge and perceptions.

This truism is apparent in both the illegal tax payment cases and the statute waiver cases. In either context, a finding of duress does not depend on express threats or wrongful actions by the taxing authorities, although they are certainly a common feature in many of those cases. Rather, the more pivotal factor is how the taxpayers *experience* the choices they face.

Of course, express threats to take illegal action can support a finding of duress, but as *Diescher*, *Robertson*, and *Rosenbloom* demonstrate, they are not necessary. And conversely, they may not be enough. The key question is always, "Is the taxpayer's choice a true choice at all?"

An IRS agent's threat to destroy a taxpayer's livelihood and take his home is going to be difficult for any taxpayer to process, but all the more so for a taxpayer who lacks experience in dealing with the IRS. When it comes to taxes, it is understandably difficult for many taxpayers to think clearly about their options. Arguably, this is all the more true when the tax issues and amounts one faces are catastrophic rather than pedestrian. In any case, of course, there is a great disparity in power and knowledge between most taxpayers and the IRS.

The complexity of tax law and procedure only compounds this problem. The courts and taxing authorities must continue to be sensitive to how taxpayers experience their interactions with the government. Fortunately, there are few cases in which the courts must decide these issues.

Some are rather obvious, when the duress is palpable. But in other cases, just as under contract law, all facts and circumstances must be examined. This function is a terribly important check on the otherwise overwhelming reach of the IRS.

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[47] *Id.* at *7-*9.

[48] *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

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