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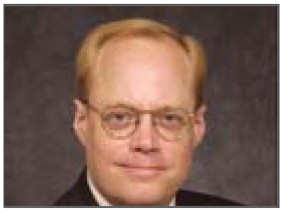

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What If IRS Makes You An Offer You Can't Refuse?

In *The Godfather*, an offer you can't refuse is where your brains or your signature will be on a contract. It's an extreme example of the concept of duress in contract law. Contracts, leases, deeds, and many other documents can be voided by duress. In fact, the situation doesn't have to be as graphic as in *The Godfather*.

Duress may involve economic pressure. Duress can even figure in tax cases. After all, most people are afraid of the IRS. Its power is imposing. Even so, the IRS does a very good job of training and policing its employees, and the agency has clear rules against taking matters too far.

But given the key role of the taxing agency and its power, there are occasionally mishaps where an IRS employee goes too far and is deceptive or threatening. The courts have found this all the more troubling if the taxpayer is especially vulnerable or is threatened with losing everything. Even if back taxes are unequivocally due, some collection efforts are too strong and too intimidating.

To be clear, taxpayers rarely win these cases. Trying to invalidate an IRS action by claiming duress usually fails. Assertions of duress can be grouped into two categories.

The first is in the forced payment of illegal taxes. The second is in the coerced waiver of the IRS statute of limitations so taxes can be collected later than lawfully allowed. In both situations, courts have occasionally called out the IRS. A few courts have even recognized that taxpayers can be victims of coercion where there was no express threat of illegal action.

As in claiming duress under contract law, all facts and circumstances must be examined. The IRS may be legally empowered to close your business or sell your house. Still, some actions are viewed as just too much, especially if the taxpayer is unsophisticated or vulnerable. Even the U.S. Supreme Court has invalidated IRS action where a taxpayer was compelled to pay what was later judged an illegal tax under economic duress.

As to statute extensions, the details matter. In *Diescher v. Commissioner*, the Board of Tax Appeals struck down an extension of the statute of limitations because it was signed under the threat of fraud penalties. Notably, the taxpayer had a lawyer when he signed the waiver. Even so, the IRS went too far, unfairly pressuring him to sign. He feared that if he did not sign, the IRS would immediately collect the deficiency and penalty.

In *Robertson v. Commissioner*, the Tax Court also found duress where unsophisticated taxpayers signed an extension of the statute of limitations. They had recently won the lottery, so they had money to fight the IRS. But they were terrified the IRS would take their house and had no prior experience with the IRS. Wealth alone does not mean you can withstand IRS pressure.

Not every person reacts to pressure in the same way. The legal ramifications of IRS action will depend in part on the taxpayer's *perception* of the threat. The courts consider one's level of education and previous experiences with the IRS.

An IRS agent's threat to destroy a taxpayer's business or take his home is difficult for anyone. It may be even more so for someone who lacks experience in dealing with the IRS. The complexity of tax law and procedure compounds the problem.

However, in some cases, even an inaccurate or flatly incorrect statement of the law or the facts by the IRS will not mean duress. For example, in *Ravin v. Commissioner*, the IRS incorrectly informed a man that his appeal rights would be barred if he did not sign a consent. That was clearly not true, but the court still refused to strike down the consent as a product of duress.

Congress periodically cuts back on IRS power and expands taxpayer rights. The pendulum swing seems headed that way again now. In the meantime, the courts are occasionally called upon to stop the IRS from coercing compliance through undue pressure or duress.

But arguing duress isn't easy, and prevailing is rare. Indeed, the law says IRS actions carry a presumption of correctness. You must actually show that IRS action was truly beyond the pale, and doing so is difficult.

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