ing, carrying, and using crack cocaine." But this argument misplaces the burden of proof. The government bears the burden of proving facts to support a § 2K2.1(b)(6)(B) enhancement; the defendant need not introduce evidence to show the enhancement does not apply to him. See United States v. Razo-Guerra, 534 F.3d 970, 975 (8th Cir. 2008). The government's argument also misunderstands its burden of proof. A § 2K2.1(b)(6)(B) enhancement is improper when the government's only evidence is a generalized connection between a gun and a user quantity of drugs. Instead, this Guidelines provision requires evidence to show the firearm at issue facilitated, or had the potential to facilitate, the felony possession of drugs. In this regard, the government failed to meet its burden.

[4] The government also contends that the stolen valuables found in the passenger compartment of Walker's car support a finding that Walker possessed the gun in connection with the crime of burglary. We disagree. The government proffered no evidence linking the stolen items to the shotgun or Walker to the burglary. We again find that the government failed to meet its burden of showing the firearm was connected with another felony offense.

The district court's application of the USSG § 2K2.1(b)(6)(B) enhancement is reversed and the case is remanded with instructions to resentence Walker without the enhancement.[1]

1. Walker also argues that his sentence should have been consistent with the one received by Samuel Johnson, whose original sentence was reversed by the Supreme Court. See Johnson v. United States, —— U.S. ——, 135 S.Ct. 2551, 2563, 192 L.Ed.2d 569 (2015). Because we remand for resentencing, we do not reach this argument.

UNITED STATES of America, Petitioner-Appellee

v.

Deborah BRABANT-SCRIBNER, Respondent-Appellant

No. 17-2825

United States Court of Appeals, Eighth Circuit.

Submitted: June 11, 2018

Filed: August 17, 2018

Background: Federal government petitioned for permission to levy upon taxpayer's home, and taxpayer objected. The United States District Court for the District of Minnesota, Joan N. Ericksen, J., 120 A.F.T.R.2d 2017-5732, granted petition. Taxpayer appealed.

Holding: The Court of Appeals, Stras, Circuit Judge, held that district court could approve petition even though IRS had not responded to taxpayer's compromise offer.

Affirmed.

Internal Revenue ⚿4855

Under regulation requiring IRS, when seeking judicial approval to levy on a taxpayer's principal residence, to demonstrate that "no reasonable alternative for collection of the taxpayer's debt" exists, district court could approve government's petition to levy on taxpayer's home even though IRS had not responded to taxpayer's offer to settle her $577,940.30 tax debt for $1,000; taxpayer's compromise offer was not an "alternative for collection" but rather an alternative to collection, as taxpayer did not proffer a different source from

which to collect the debt and her offer involved assets that could not satisfy her tax liability. 26 U.S.C.A. § 6334(a)(13)(B)(i), (e)(1)(A); 26 C.F.R. § 301.6334-1(d).

Appeal from United States District Court for the District of Minnesota—Minneapolis

Counsel who represented the appellant was Eric Johnson of Saint Paul, MN.

Counsel who represented the appellee was Thomas J. Clark, of Washington, DC., and Rachel Ida Wollitzer of Washington, DC.

Before WOLLMAN, KELLY, and STRAS, Circuit Judges.

STRAS, Circuit Judge.

Deborah Brabant-Scribner incurred half a million dollars in tax liabilities, waited until the IRS was on the brink of taking her home, and then offered to pay a tiny fraction of her debt. She now argues that the district court [1] could not approve the seizure of her home until the IRS first responded to her offer. She is mistaken.

When this case began, Brabant-Scribner owed $577,940.30 in federal taxes and penalties. The IRS had already taken her boat and recovered what it could from her bank accounts, leaving her home as the only asset of meaningful value. The government petitioned for permission to levy upon it—that is, to seize it, sell it, and apply the proceeds toward her debt. Brabant-Scribner responded by filing an "Offer in Compromise" with the IRS and an "Objection to Petition" with the district court. In the offer, citing "principles of effective tax administration," she proposed paying $1,000 to settle all of her tax debt. In the objection, which she filed the same day, she claimed that the court could not approve the levy until after she received an answer from the IRS. The district court disagreed and granted the government's petition.

Brabant-Scribner's challenge to the district court's ruling is based on 26 C.F.R. § 301.6334-1(d)(1). The regulation implements the statutory requirement that the IRS must obtain judicial approval before levying on a taxpayer's principal residence. *See* 26 U.S.C. § 6334(e)(1)(A) (allowing the IRS to levy on a taxpayer's principal residence "if a judge or magistrate of a district court of the United States approves (in writing)"); *see also id.* § 6334(a)(13)(B)(i) (providing that without judicial approval, a principal residence is "exempt from levy"). To proceed, the IRS must demonstrate that it has complied with all legal and procedural requirements, that the debt remains unpaid, and that "no reasonable alternative" for collection of the debt exists. 26 C.F.R. § 301.6334-1(d)(1). According to Brabant-Scribner, her offer of compromise was a "reasonable alternative" to seizing her home. But she misreads the regulation: it is about collection, not compromise.

The relevant language is a "reasonable alternative for collection of the taxpayer's debt." *Id.* The word "for" is key. An alternative *for* collection refers to a different source from which to collect the debt. For example, a taxpayer might have other assets the IRS can levy on instead of her home, or the IRS could allow the taxpayer to make installment payments to satisfy the debt over time. In either case, the IRS still collects the unpaid debt, just not through the forced sale of the taxpayer's home.

A taxpayer's offer to compromise with the IRS is different. To start, 26 C.F.R.

1. The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota.

§ 301.6334-1(d)(1) does not mention "compromise," or any similar term, but refers only to the collection of debts by the IRS. Accepting a proposal like Brabant-Scribner's would require the IRS to agree not to collect the debt and, instead, to forgive all but a portion of it. *See id.* § 301.7122-1(e)(5) ("Acceptance of an offer to compromise will conclusively settle the liability of the taxpayer specified in the offer."). In short, Brabant-Scribner's "offer in compromise" was not an alternative *for* collection but rather an alternative *to* collection.

The remainder of the regulation confirms our reading. Once the government makes its initial showing, the taxpayer has an opportunity to object and "will be granted a hearing to rebut the Government's prima facie case if the taxpayer . . . rais[es] a genuine issue of material fact demonstrating . . . other assets from which the liability can be satisfied." 26 C.F.R. § 301.6334-1(d)(2). This is the flipside of the government's burden: the government must initially show that only the taxpayer's home can pay down the debt; the taxpayer can then rebut this showing by proving she can in fact pay her debt some other way. A statement by the taxpayer that she is willing and able to pay something less than what she owes—the essence of an "offer in compromise"—has no place in this scheme, because it has no bearing on whether seizing the home is the only way for the IRS to collect the debt. Such an offer does not involve "other assets from which the liability can be satisfied." *Id.* To the contrary, it involves assets that *cannot* satisfy the liability, but which the taxpayer hopes the IRS will accept in lieu of full satisfaction.

To be sure, Brabant-Scribner is correct that the IRS does settle tax liabilities for less than face value, particularly when the taxpayer cannot afford the full amount (as she claims is the case here). *See* 26 U.S.C. § 7122; 26 C.F.R. § 301.7122-1(b)(2), (3)(i). But this does not, as Brabant-Scribner believes, entitle her to a decision from the agency before a court approves a levy on her home. Nothing requires the district court to ensure that the IRS has fully considered a taxpayer's compromise offer before approving a levy on a taxpayer's home.

When the government has made its case for levying on a taxpayer's home and the taxpayer cannot rebut it, the district court "would be expected to enter an order approving the levy." 26 C.F.R. § 301.6334-1(d)(2). The government and the district court did what was required. We affirm.

Samuel SCUDDER, Plaintiff–Appellant

v.

DOLGENCORP, LLC, doing business as Dollar General Store, Defendant–Appellee

No. 17-2941

United States Court of Appeals, Eighth Circuit.

Submitted: April 10, 2018

Filed: August 17, 2018

Background: Former employee, who was member of National Guard, brought action against former employer, alleging failure to re-employed under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The United States District Court for the Eastern District of Arkansas, Beth Deere, J., 2017 WL 3581582, granted employer's motion for summary judgment. Employee appealed.