**DOJ Reviewer Meeting**

*Scene: Discussions and DOJ between Trial Attorney and reviewer about whether to proceed and hearing strategies*

**Trial Attorney**: Hi, as you know, a hearing is scheduled later this month in my principal residence levy case against Joe and Nancy. I wanted to discuss my approach to the hearing. But first, I would like to go over some factors that have come to light that may be favorable to the taxpayers.

**Reviewer:** Sure, always happy to talk through your strategy.

**TA:** Great, the first thing I wanted to discuss was whether we should proceed with requesting a principal residence levy, or whether, because of the taxpayers’ hardships, we should consider an alternative course of action.

**Reviewer:** Well, I’m always open to considering the taxpayers’ circumstances, but if there’s no other alternative to seriously address their tax liabilities, I will probably be skeptical.

**TA:** Understood, there are few facts that jump out at me as a little problematic with this case. The first relates to whether the IRS has exhausted all of the reasonable alternatives for collection. Soon after the IRS filed its Notice of Federal Tax Lien, Joe called the IRS and stated that he wanted to enter into an Offer in Compromise or an installment agreement. The Revenue Officer never pursued either option with him.

**Reviewer:** You’re correct that we must show that the IRS is required to exhaust all reasonable collection efforts, however this is not a case where the taxpayer made any further attempt to pursue either option. There are specific steps that must be met to start that process and – unless there’s evidence the RO dismissed these options out of hand—this is more of a hypothetical argument. In fact, as I recall, the MD Fla. recently game to the same conclusion in *Gower v. U.S.*

**TA:** Yeah, I was pretty much at the same place, but just wanted a gut check with you. Also, I’m confident that we meet the other factors under §6334: 1) The taxpayer has failed to pay the underlying liabilities in full; 2) the IRS has satisfied all necessary legal requirements and administrative procedures; and 3) as we just discussed, the IRS has exhausted all reasonable alternatives for collection.

**TA:** Another factor that troubles me is whether Joe and his wife can demonstrate a hardship. The tax liabilities are all the result of Joe’s gambling losses, and his wife Nancy did not apparently contribute to them. Because they are separated, Joe no longer lives in the house, but helps pay the mortgage because Nancy and the kids continue to live there.

I understand that equitable considerations don’t play any role in whether the court approves a principal residence levy. But this is a factor DOJ can consider in deciding whether to pursue the case or look for a compromise. I’m also concerned that they court may nonetheless be persuaded by this argument.

**Reviewer:** Yes, but we shouldn’t let this be a factor in evaluating our position at the hearing since, as you point out, this isn’t really a factor the judge should consider. This may pull at the court’s heartstrings, but Joe also spent lavishly during the same period. This should put the taxpayer’s circumstances into perspective for the court. Whether or not we should pursue a compromise is another matter, do you see any reasonable basis on which we would settle the case?

**TA:** Well, the equity in the house is still the taxpayer’s most significant asset. While I agree that he isn’t very sympathetic, it might be appropriate to consider the impact that seizing the house might have on his wife and kids. Because he has frittered away his assets, I would recommend agreeing to installment payments in exchange for not seizing the property. We could allow for a private sale within the next 6 months, and if the proceeds meet a certain level dismiss the principal residence levy. If it doesn’t sell, we would proceed with the levy. That would give the family some time to transition out of the home.

**Reviewer:** I agree that may be an option, has the taxpayer suggested any willingness to settle on this basis?

**TA:** Well, not that specifically, but they’ve made some noises about settlement prior to the hearing.

**Reviewer:** In that case, let’s stick with our strategy for hearing. We meet all of the elements required for a principal residence levy and the taxpayer’s only counter argument is an equitable one that the court shouldn’t consider.