Joe Meets with His Attorney

*After Joe is served with an Order to Show Cause in the IRC 6334(e) proceeding filed against him, he meets with his attorney to discuss potential defenses.*

**Joe:** Is there anything we can do? It doesn’t seem fair that the IRS can seize the house without giving me a chance to come up with an alternative to paying my taxes.

**Joe’s Attorney:** Well, the Government must establish that all applicable legal and administrative procedures were followed in order to win. Think back to your interactions with the IRS. Did anyone from the IRS call you or visit you in person?

**Joe:** Yeah, someone stopped by my office and handed me some papers. I think I still have them.

**Joe’s Attorney:** Ok, I’d like to see the papers. Did the IRS representative explain to you that seizure of your residence was the next step?

**Joe:** Not that I recall. And having my house seized, I would have remembered that.

**Joe’s Attorney:** Did the IRS representative direct you to the Taxpayer Advocate to assist you with collections issues.

**Joe:** I don’t remember. There might have been a Form 911 or something in the papers. That number stands out in my mind because it’s ironic that the IRS form to use when you’re in deep trouble is Form **911**.

**Joe’s Attorney:** Well, the IRS representative may not have followed all administrative procedures that are laid out in the Internal Revenue Manual. However, failure to follow the Internal Revenue Manual is generally not actionable in court. Did the IRS representative ask if there were any alternatives for collection, like other sources of income or assets?

**Joe:** Not at all. And had the IRS person asked, I would have told them about this really big casino poker jackpot I had recently hit. Heck, I would have told to the IRS person to take the new Mercedes Maybach sitting in the parking lot at the office.

**Joe’s Attorney:** That could be more problematic for the Government. Treas. Reg. 301.6334-1(d)(1), part of the Government’s prima facie case must be a showing that “no reasonable alternative for collection of the taxpayer's debt exists.” Relatedly, per Treas. Reg. 301.6334-1(d)(2), the taxpayer may rebut the Government’s prima facie case by demonstrating that a material fact exists as to whether “the taxpayer has other assets from which the liability can be satisfied.”

**Joe:** You know something else, I don’t even owe as much as the IRS says I owe. The notice I received says that I owe $35,000 for 2015 and $22,000 for 2016. That’s ridiculous. I might owe half that much. We’ll have to sort that out when we go to court.

**Joe’s Attorney:** Unfortunately, Joe, in a proceeding under IRC 6334(e), the taxpayer is not able to challenge the merits underlying the tax liability in the proceeding. See Treas. Reg. 301.6334-1(d)(2).

**Joe:** Worst yet, the IRS person mailed letters to my wife and kids, telling them I was in trouble with the IRS. That’s really embarrassing. Why did they have to know about my tax problems?

**Joe’s Attorney:** Well, the IRS representative was just doing their job in accordance with the rules. Per Treas. Reg. 301.6334-1(d)(3): “If the property to be levied is owned by the taxpayer but is used as the principal residence of the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child, the Government will send a letter to each such person providing notice of the commencement of the proceeding. … The purpose of the letter is to provide notice to the family members that the property may be levied.”

**Joe’s Attorney:** Let me reach out to the DOJ attorney who filed the suit to ask about potentially entering into an offer-in-compromise based on liquidation of other assets.