

# Latest Tax Updates and Court Decisions

**Atty. Irwin C. Nidea**

# OUTLINE

**Unenforceable Assessments**

**Estoppel**

**180-day Rule**

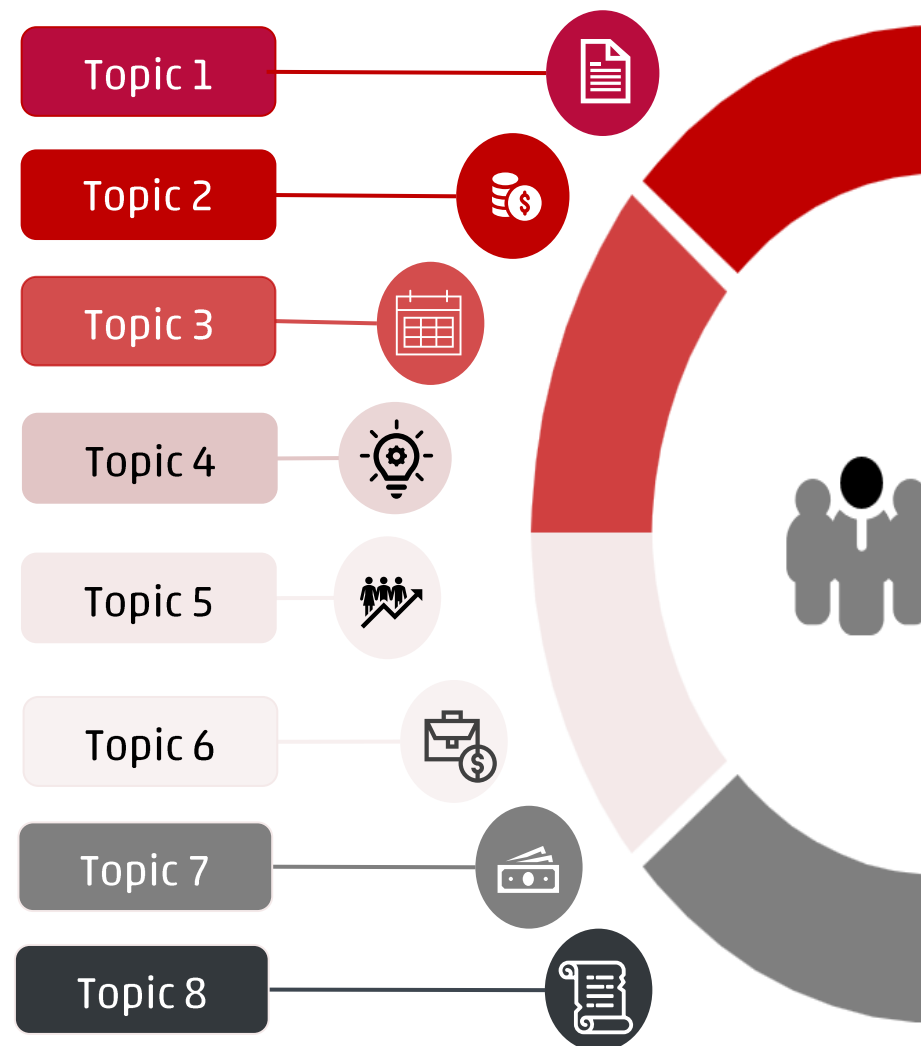
**Duty to give reason**

**Demand to pay**

**Premature collection of taxes**

**VAT refund – 2yr prescriptive period**

**How to question a waiver?**



## Unenforceable Assessment

Characteristic  
of a valid  
Letter of  
Authority

- ✓ Must be served within 30 days from issuance.
- ✓ Must contain the names of the Revenue Officer and the Group Supervisor who will conduct the audit.
- ✓ Must be signed by the CIR or his duly authorized representative.
- ✓ Must be received by the taxpayer or its duly authorized representative.

## Unenforceable Assessment

Period within  
which to  
conduct the  
investigation

The investigation  
may only be  
conducted within  
**120 days** from  
the issuance of the  
LOA

## Unenforceable Assessment

Period within which to conduct the investigation

The investigation may only be conducted within **120 days** from the issuance of the LOA

***Did the BIR issue a revalidated LOA?***

**YES**

The assessment is valid and enforceable

**NO**

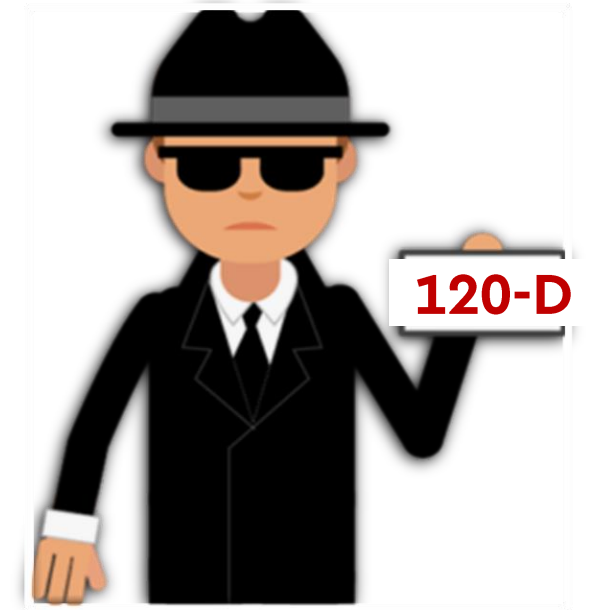
The assessment is not void, but *unenforceable*

## Unenforceable Assessment

### AFP General Insurance Corporation vs. Commissioner of Internal Revenue

G.R. No.222133  
November 4, 2020

"Failure to comply with the 120-day rule does not void LOA *ab initio*. It merely renders an LOA unenforceable. **It does not invalidate the revenue officer's authority for the first 120 days, or the procedures performed within that period.**"

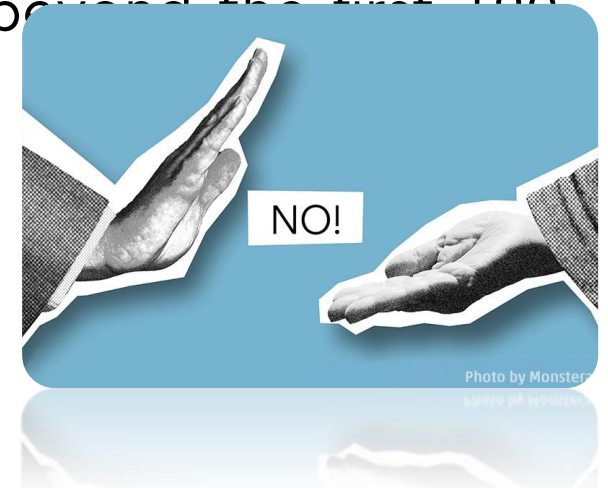


# Unenforceable Assessment

## Commissioner of Internal Revenue vs. Chun Lang Chan

CTA EB No. 2489,  
September 14, 2022

"Failure to comply with the 120-day rule does not void the LOA ab initio. **The expiration of the 120-day period merely renders an LOA unenforceable**, inasmuch as the Revenue Officer must first seek ratification of his expired authority to audit to be able to validly continue investigation beyond the first 120 days."



# Estoppel on the part of the Taxpayer

Commissioner of  
Internal Revenue  
vs.  
First Philec, Inc.

CTA EB Case No.  
2438 (CTA Case No.  
9064)  
February 15, 2023

"The taxpayer is estopped from questioning the validity of the waiver. It was held that **estoppel applies where the taxpayer failed to raise the invalidity of the waivers at the earliest opportunity.**"





## Estoppel on the part of the Taxpayer

### AFP General Insurance Corporation vs. Commissioner of Internal Revenue

G.R. No. 222133,  
November 04, 2020

"even if the Court assumes that the BIR illegally extended their investigation, AGIC could have also resisted further investigation as early as the 121<sup>st</sup> day after the LOA's issuance/service if it truly believed that the assigned revenue officers no longer possessed the requisite authority. **That it kept silent about the supposed violation and complained only when it was already found liable for deficiency taxes, once again, only show that it acquiesced to the BIR's extended audit, if any.**"



## 180-day Rule

Nueva Ecija II  
Electric  
Cooperative,  
Inc. Area II  
(NEECO II Area  
II)  
vs.  
Commissioner of  
Internal Revenue

G.R. No. 258101,  
April 19, 2022

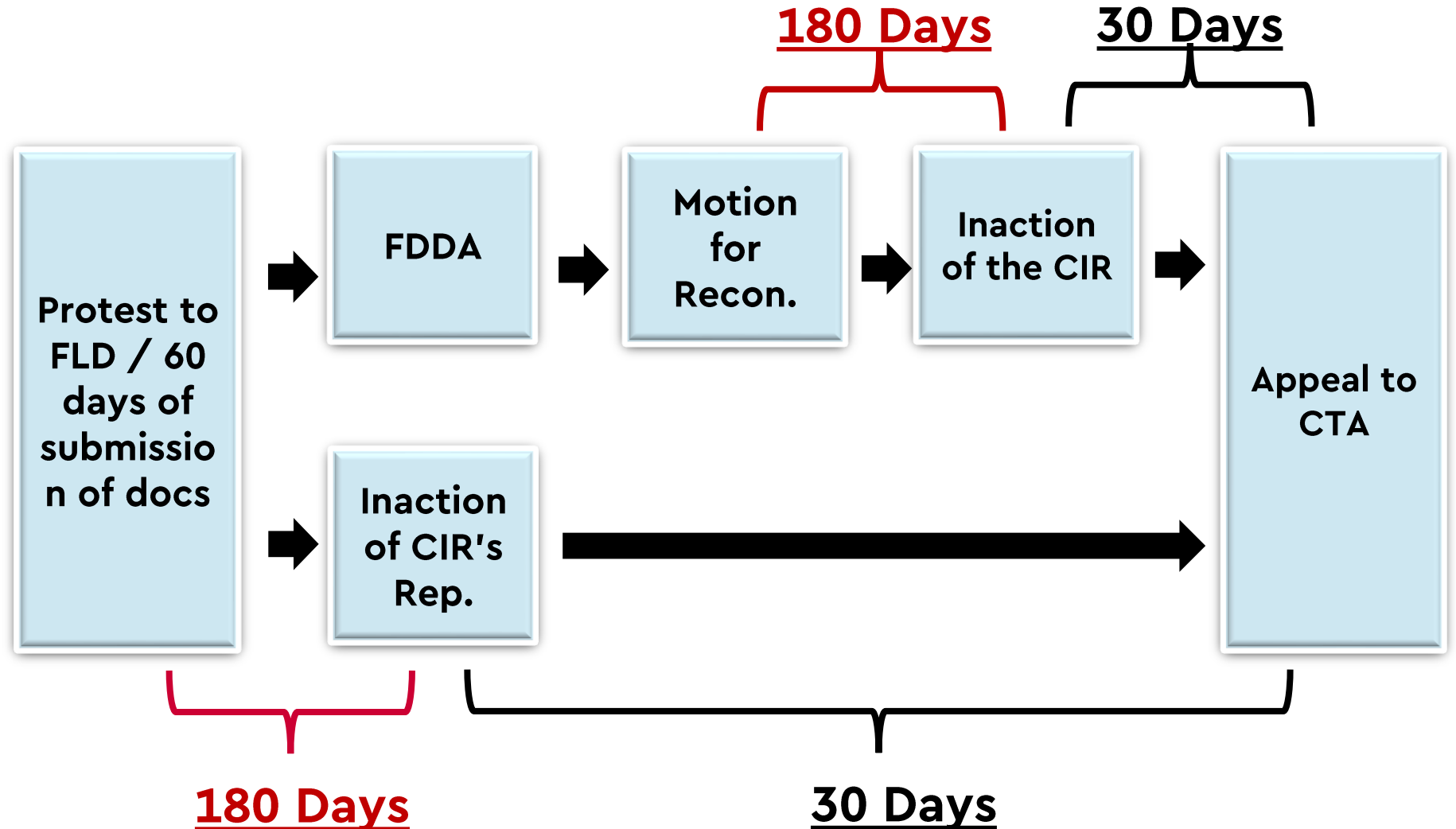


**"The one hundred eighty (180)-day period should be reckoned from the "submission of documents".**

**Nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal.** As aptly observed by the CTA EB, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law. "

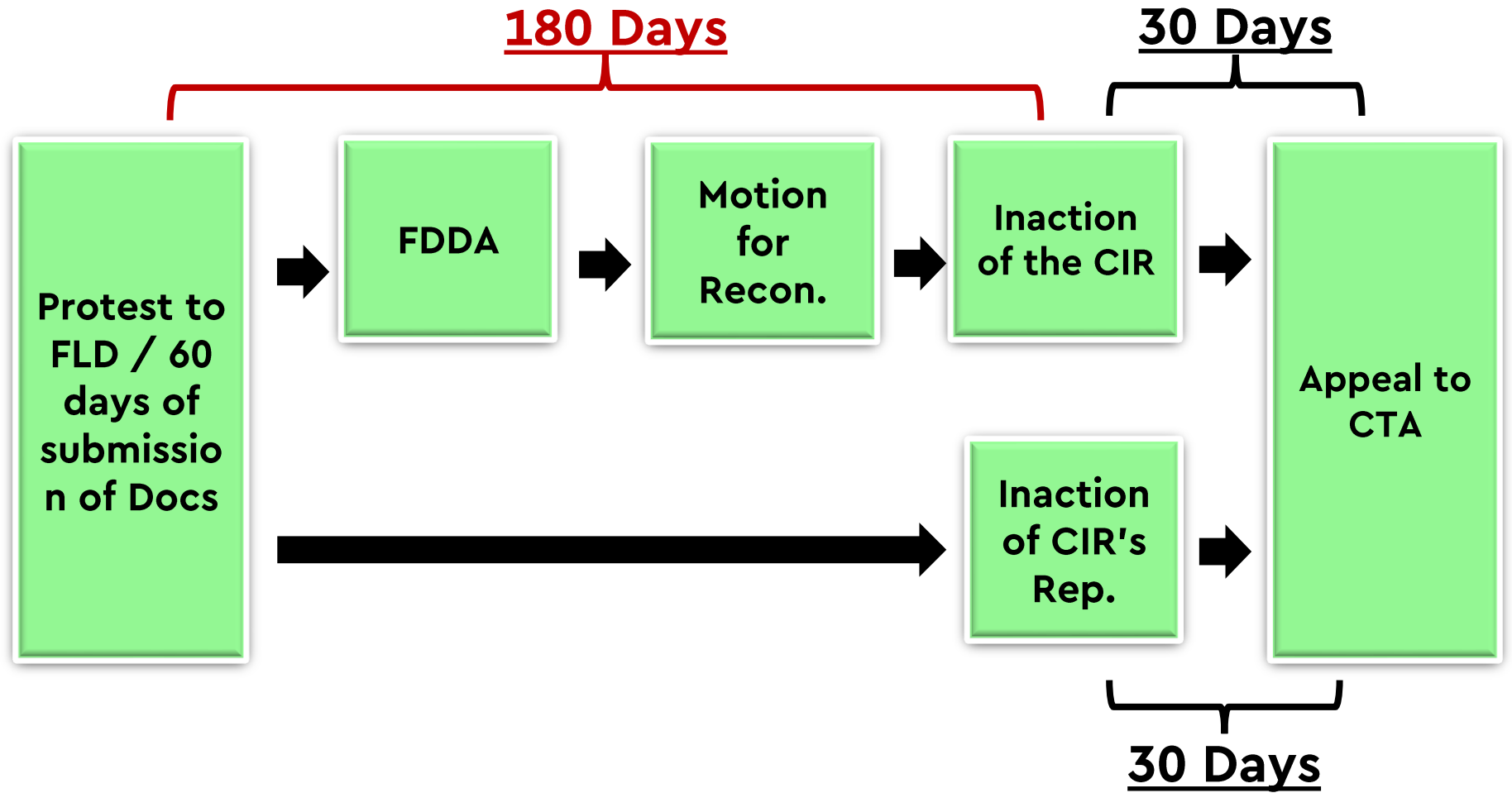
# 180-day Rule

# OLD RULE



# 180-day Rule

# NEW RULE



## Duty to Give Reason

### RCL Feeders Phils., Inc. vs. Commissioner of Internal Revenue

C.T.A. Case No. 9917  
February 1, 2023

## Facts:

- ❑ Taxpayer is being assessed for alleged deficiency tax for 2019 as follows:

	PAN	FAN	FDDA
IT	704,379.13	704,379.13	704,379.13
VAT	1,544,001.50	1,544,001.50	1,544,001.50
EWT	42,909.94	42,909.94	42,909.94
WTC	<u>222,670.98</u>	<u>222,670.98</u>	<u>222,670.98</u>
<b>TOTAL</b>	<b><u>2,513,961.55</u></b>	<b><u>2,513,961.55</u></b>	<b><u>2,513,961.55</u></b>

- ❑ The basic tax assessment did not change despite the filing of Reply to PAN, Protest to FAN.

## Duty to Give Reason

RCL Feeders  
Phils., Inc. vs.  
Commissioner of  
Internal Revenue

C.T.A. Case No. 9917  
February 1, 2023

"Correspondingly, as part of the due process requirement in **the issuance of tax assessments, the respondent must give reason(s) for rejecting petitioner's explanations and must give the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear on record.** The respondent has obviously not observed such requirement in the issuance of the subject FAN, and the subject FDDA."



# No valid demand to pay

## Commissioner of Internal Revenue v. Mendoza

C.T.A. EB Case No. 2356 (C.T.A. Case No. 9698), February 2, 2023

**"The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment sans a categorical demand for payment within a specific date or period is, in legal contemplation, void."**



## No valid demand to pay

### Commissioner of Internal Revenue v. Robinsons Land Corp.,

C.T.A. EB Case No. 2430 (C.T.A. Case No. 9163) January 17, 2023

"The subject FLD and FANs clearly indicated a fixed and definite amount of respondent's deficiency tax liabilities. Nonetheless, they are void for failure to state a demand or a period for payment.

**Clearly, the FLD, FAN, and the FDDA did not contain a definite and actual demand for respondent to pay the alleged deficiency taxes.**

Thus, it was held that the assessments are void, for petitioner's failure to state the due



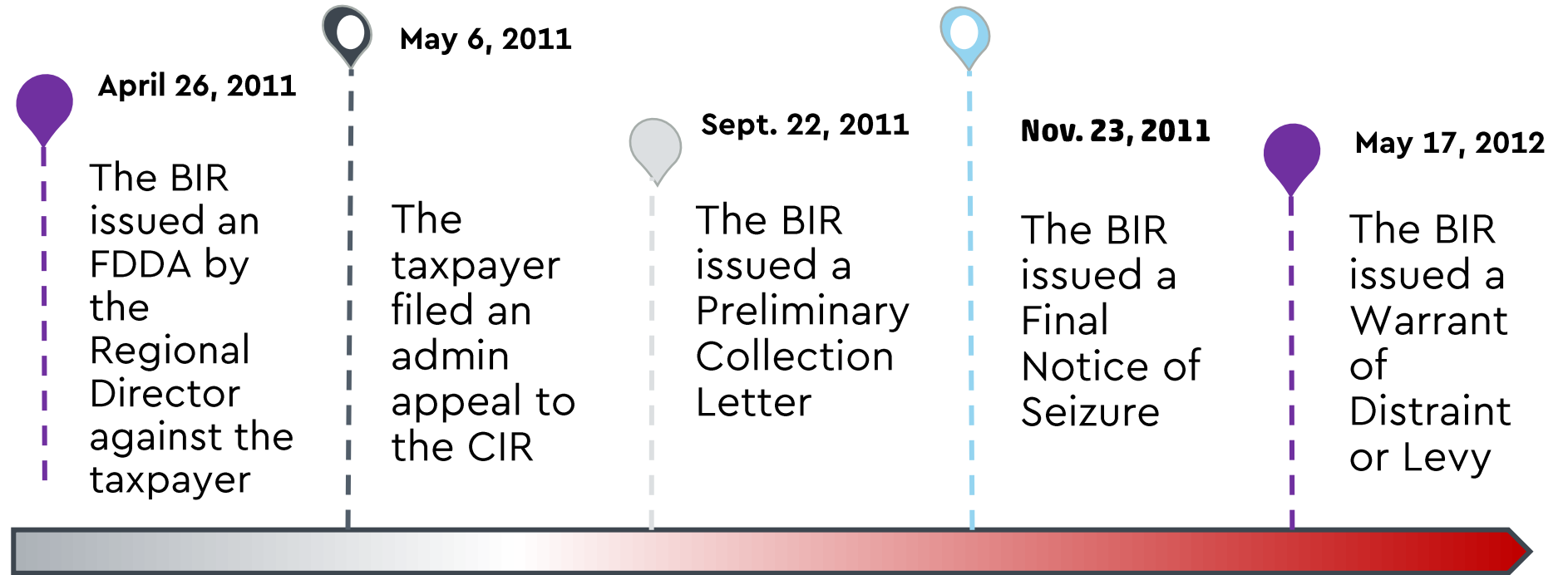


# Premature collection of taxes

## Light Rail Transit Authority v. Commissioner of Internal Revenue

G.R. No. 231238,  
June 20, 2022

### Facts:



## Premature collection of taxes

Light Rail Transit Authority v. Commissioner of Internal Revenue

G.R. No. 231238,  
June 20, 2022

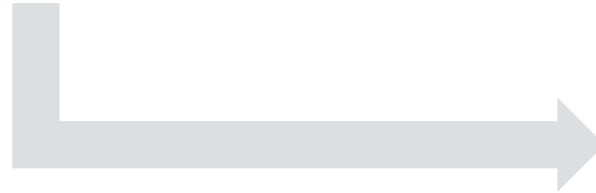
Like the Final Decision on Disputed Assessment, **all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner.** More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise.



# Premature collection of taxes

## Light Rail Transit Authority v. Commissioner of Internal Revenue

G.R. No. 231238,  
June 20, 2022



What if the case was remanded by the CIR to the RD. Is this allowed?

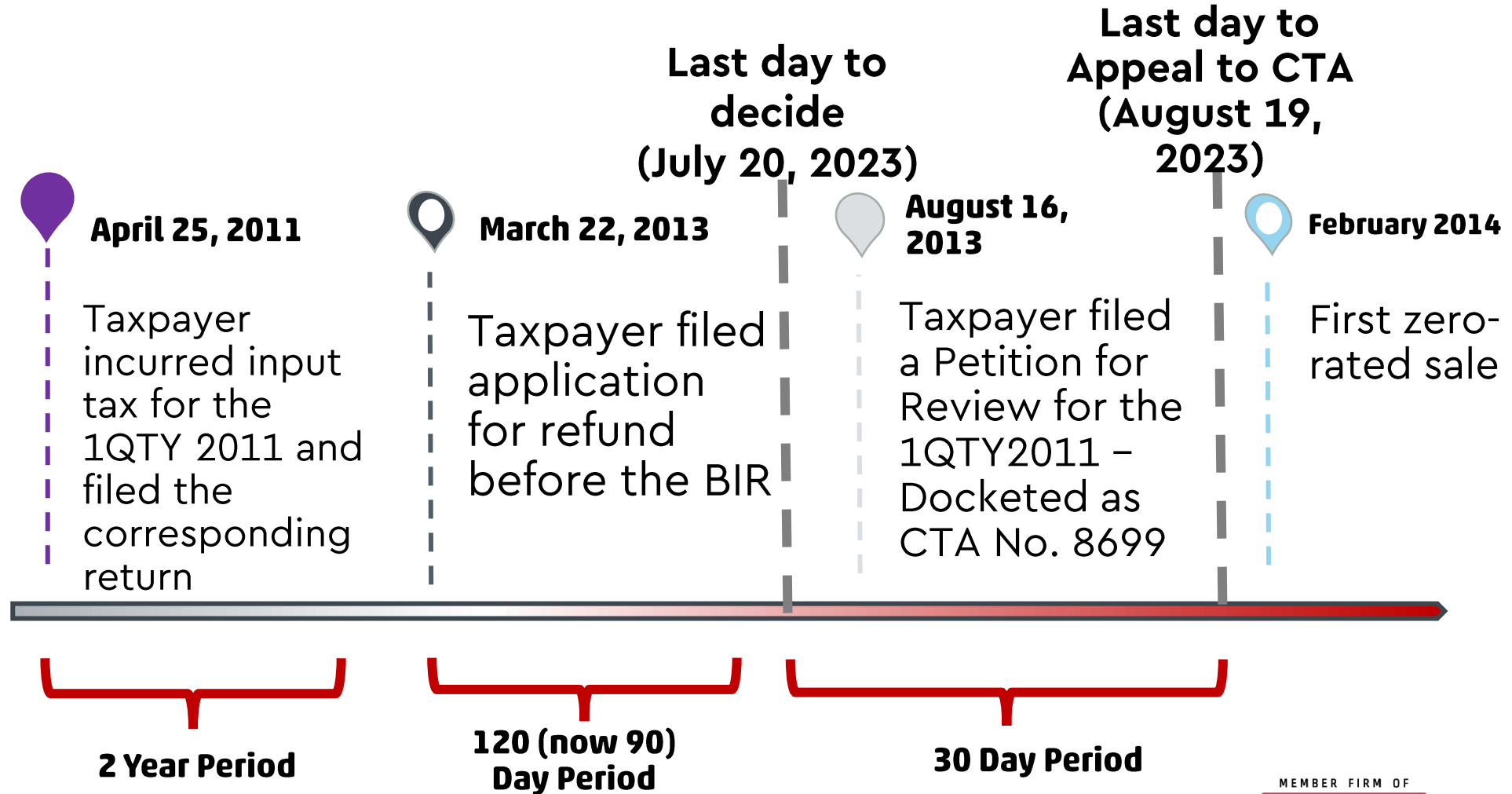


What happens when the CIR decides after the court invalidates the collection?

# VAT refund – 2yr prescriptive period

## Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue

G.R. No 250479,  
July 18, 2022



# VAT refund – 2yr prescriptive period

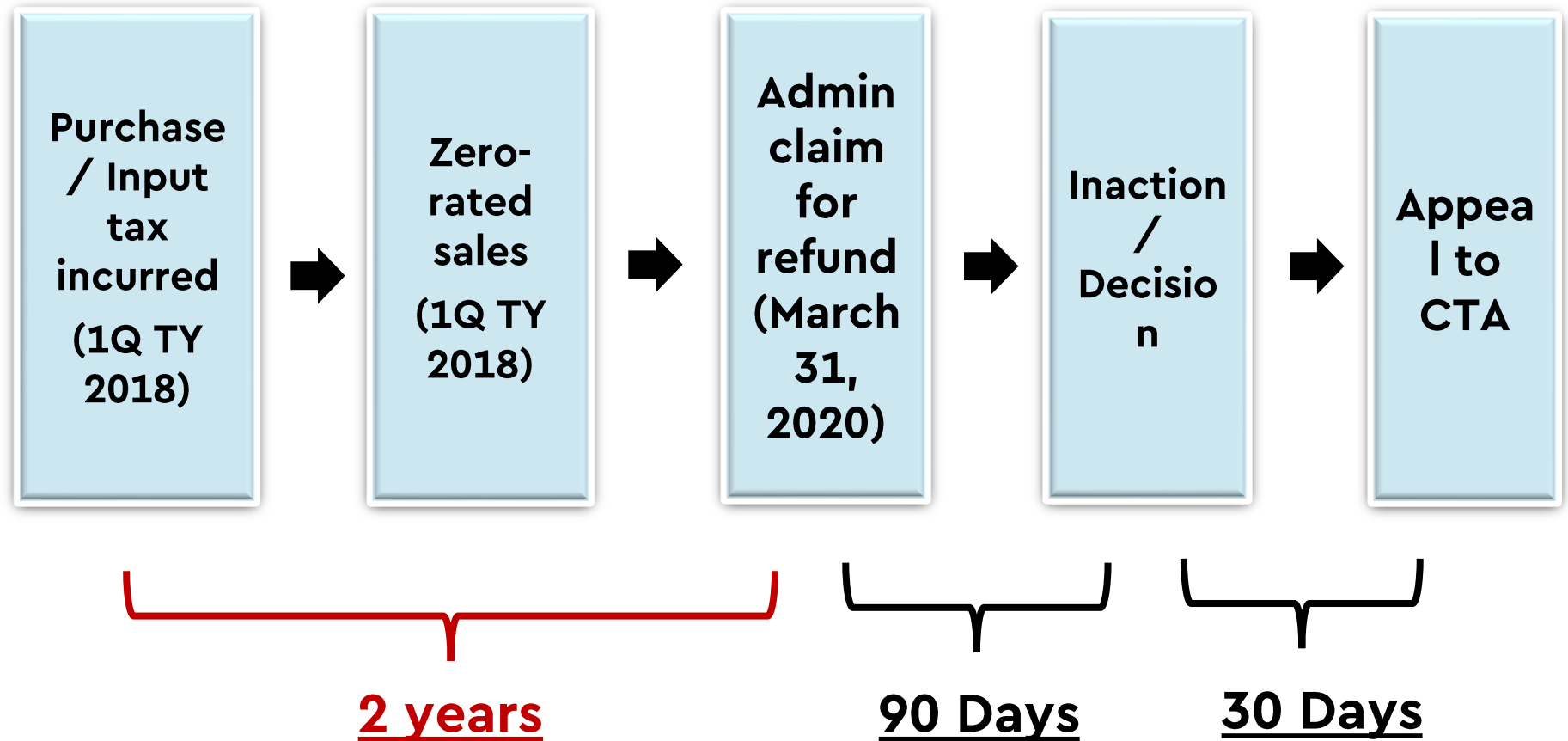
## Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue

G.R. No 250479,  
July 18, 2022

	<b>Taxpayer's Arguments:</b>	<b>Supreme Court</b>
<b>A</b> •	2-year prescriptive period should be reckoned from the time the sales relating to input VAT incurred.	The phrase "when the relevant sales were made" refers to the zero-rated or effectively zero-rated sales, and not to the purchases of goods and services from which it incurred input VAT. (Based on the heading of Section 112(A))

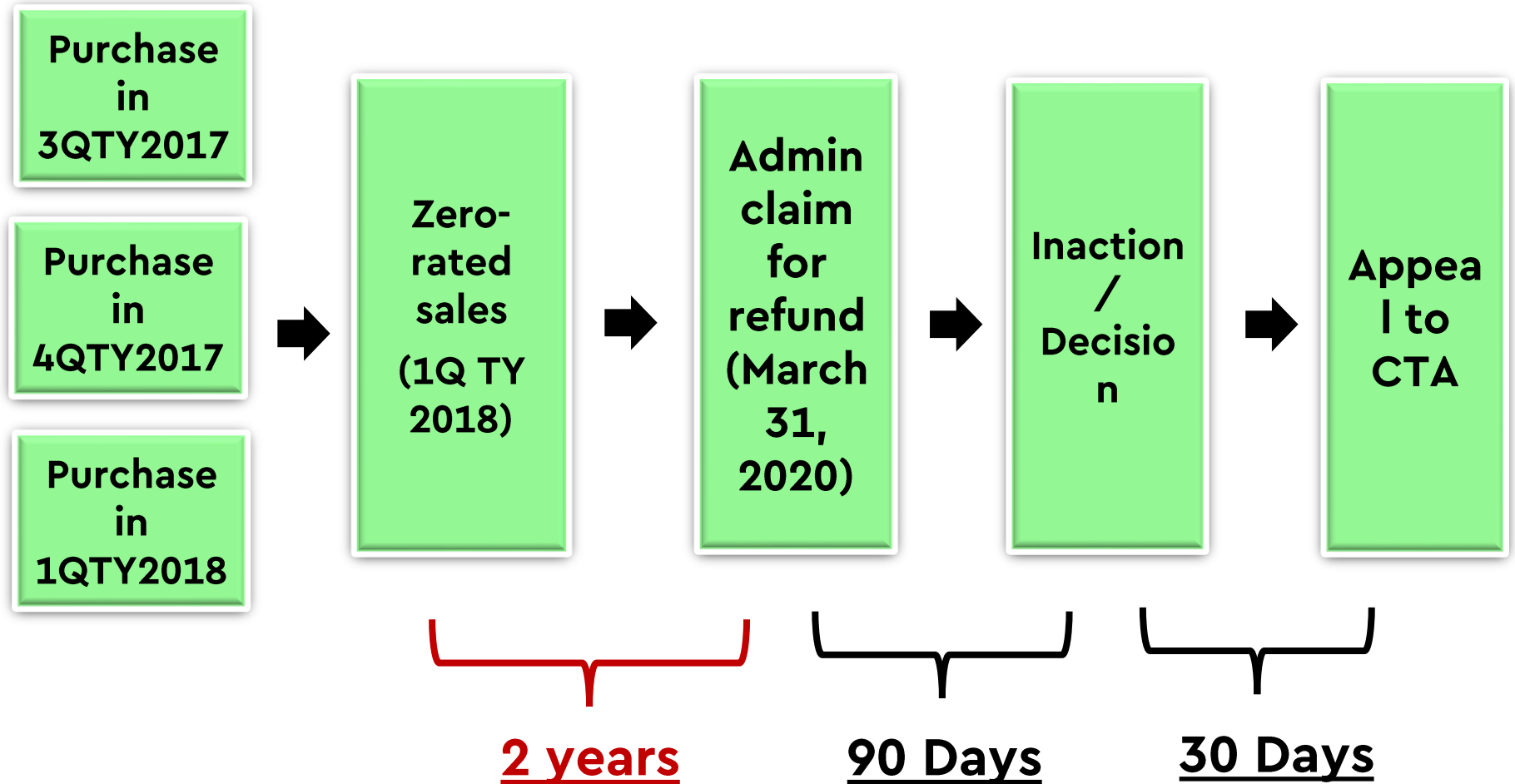
VAT refund –  
2yr  
prescriptive  
period

**OLD RULE**



VAT refund –  
2yr  
prescriptive  
period

**OLD RULE**



## How to question a waiver?

- ✓ **A waiver is bilateral written agreement between the taxpayer and the Commissioner to extend the period of prescription.**

Section 222 (b) of the Tax Code, as amended, provides that the period to assess may be extended when both the CIR and the taxpayer have agreed in writing.

- ✓ **Notice of the acceptance of the waiver is a mandatory requirement for the perfection of the agreement.**

To be binding, waivers require the concurrence of the Commissioner of Internal Revenue (*Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 115712, February 25, 1999*).



**Thank you for your attention.**