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# **The Right to Due Process**

Atty. Irwin C. Nidea Jr.



Outline

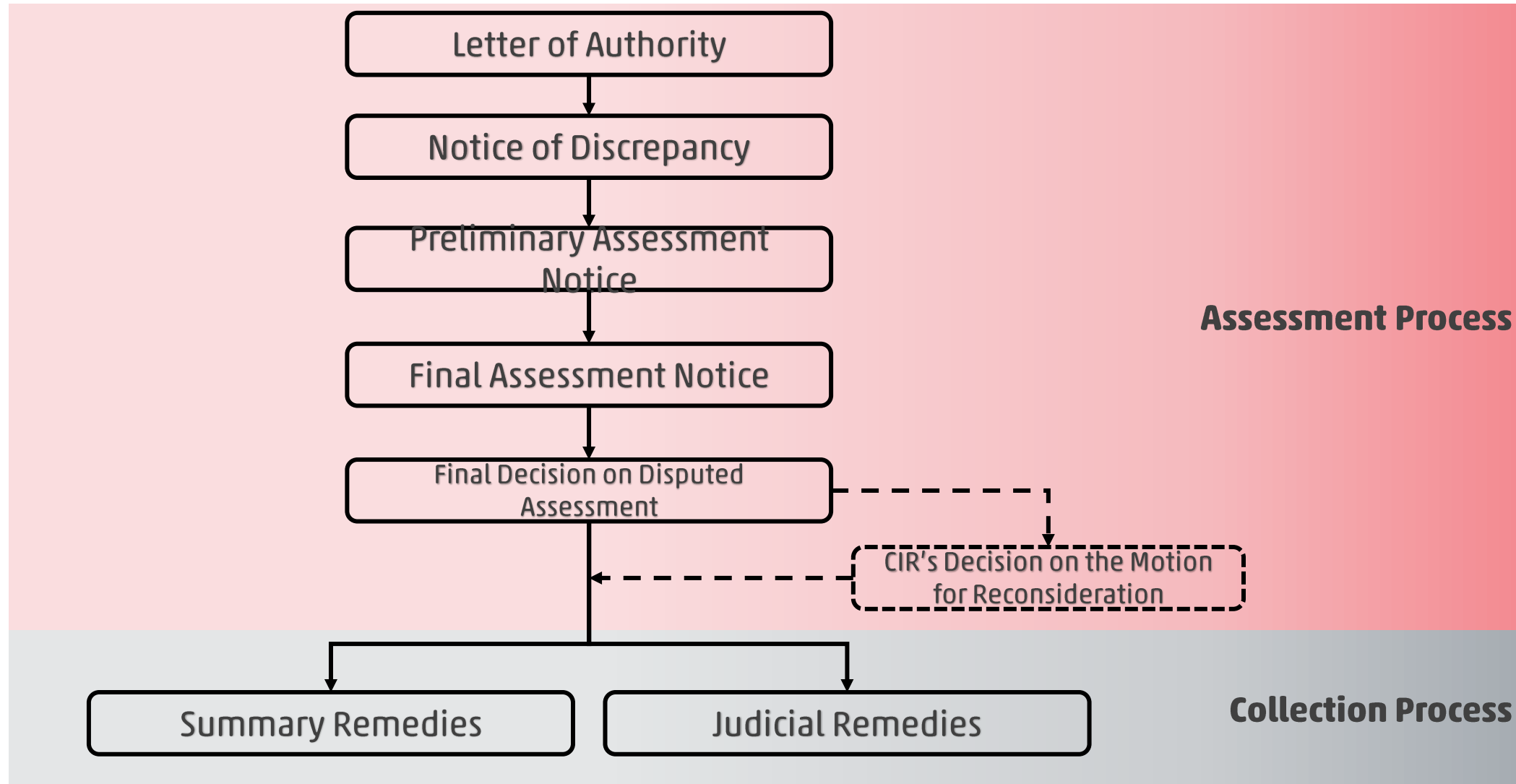
Is the BIR's current enforcement and collection policy, bending or breaking the law?

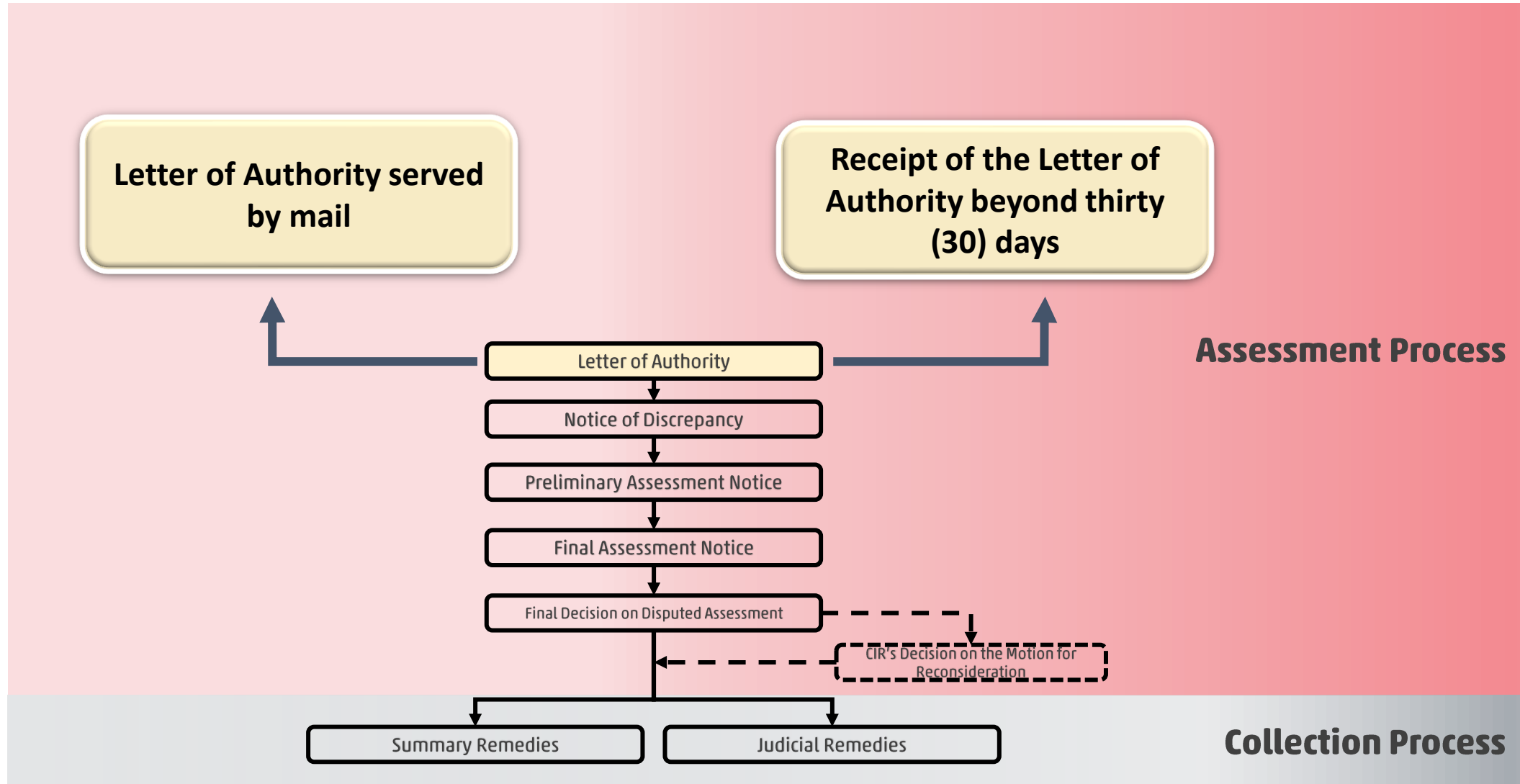
How can a taxpayer defend itself from levy and garnishment?

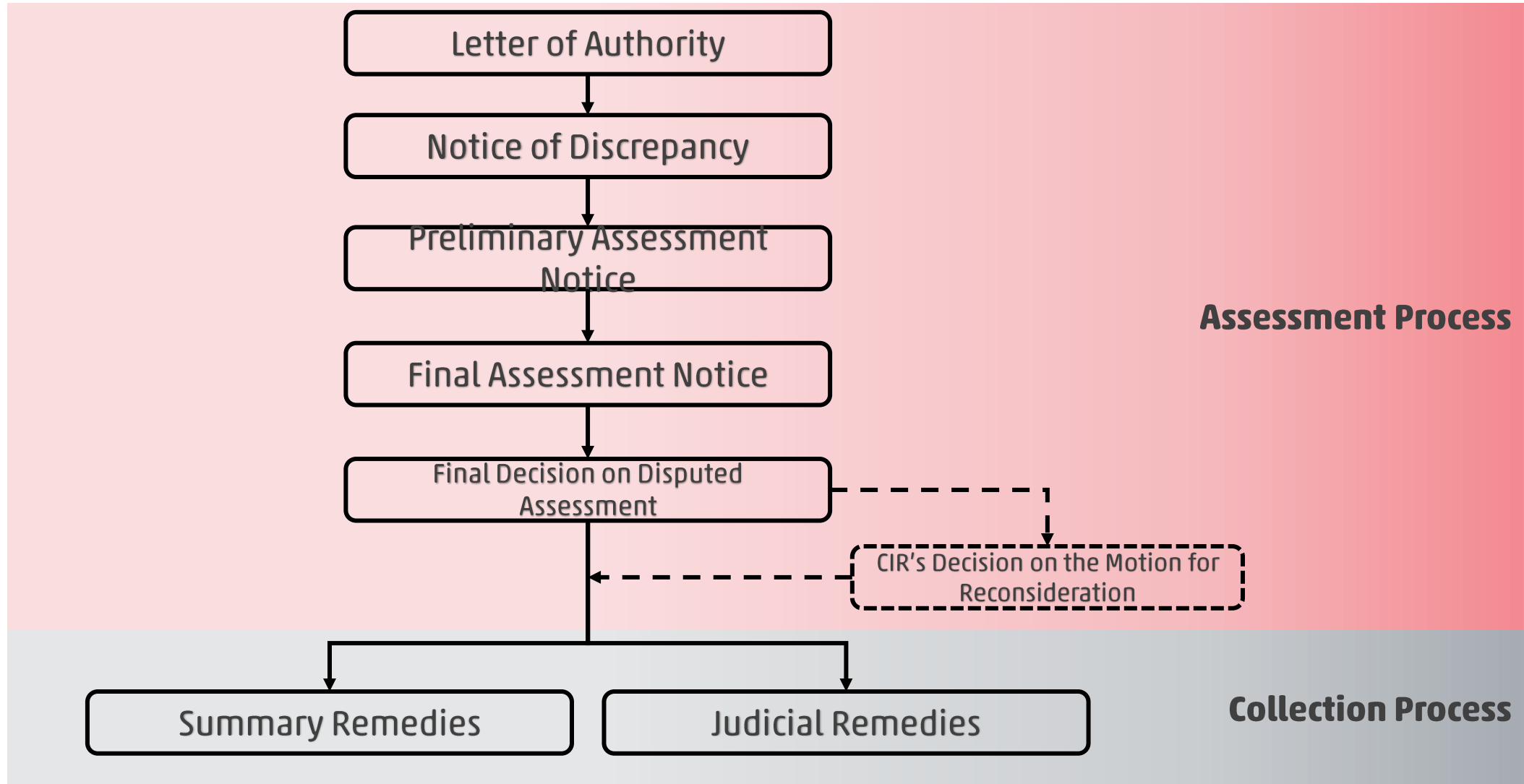
What are the current and emerging jurisprudence that redefine taxpayer's rights and remedies?

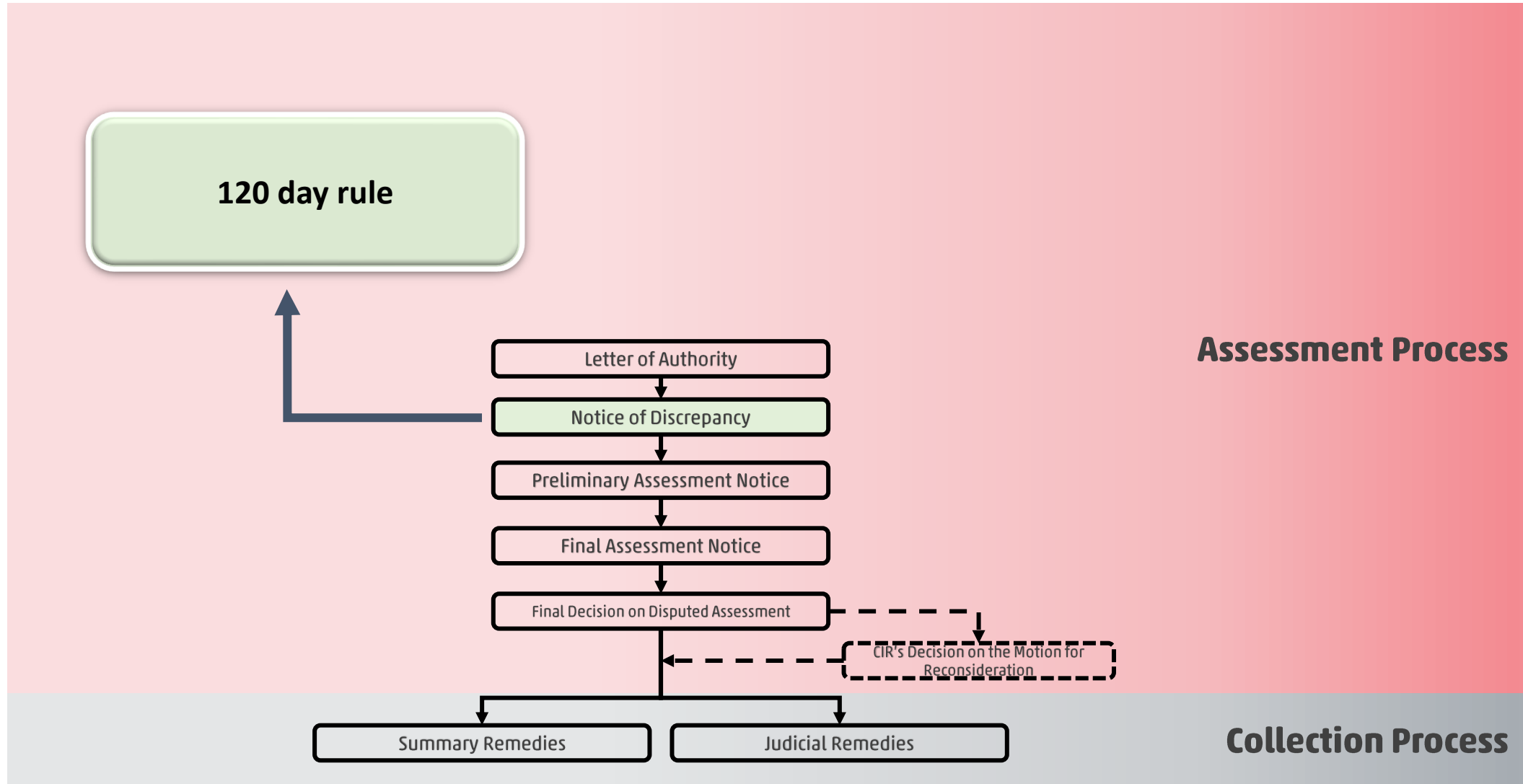
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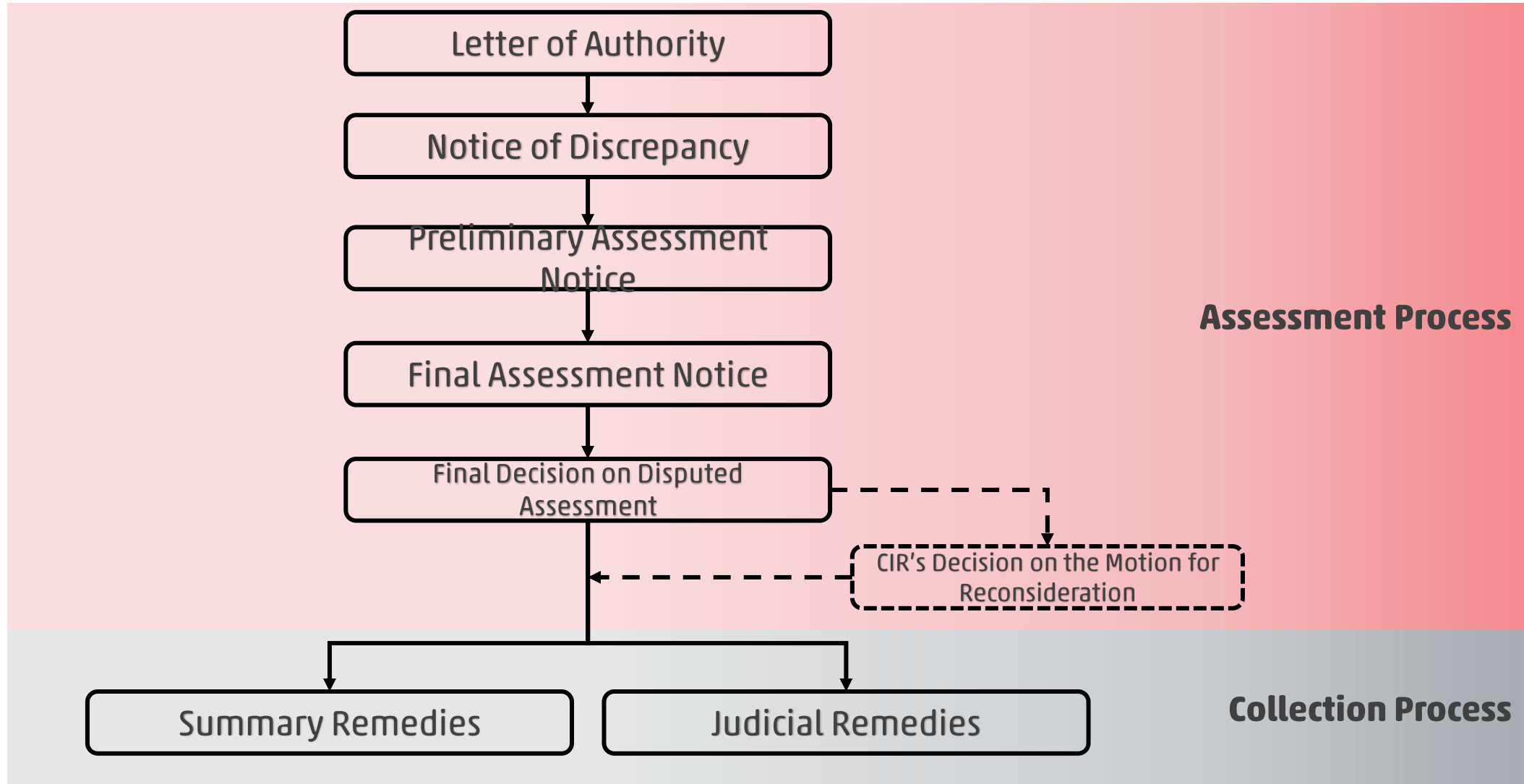


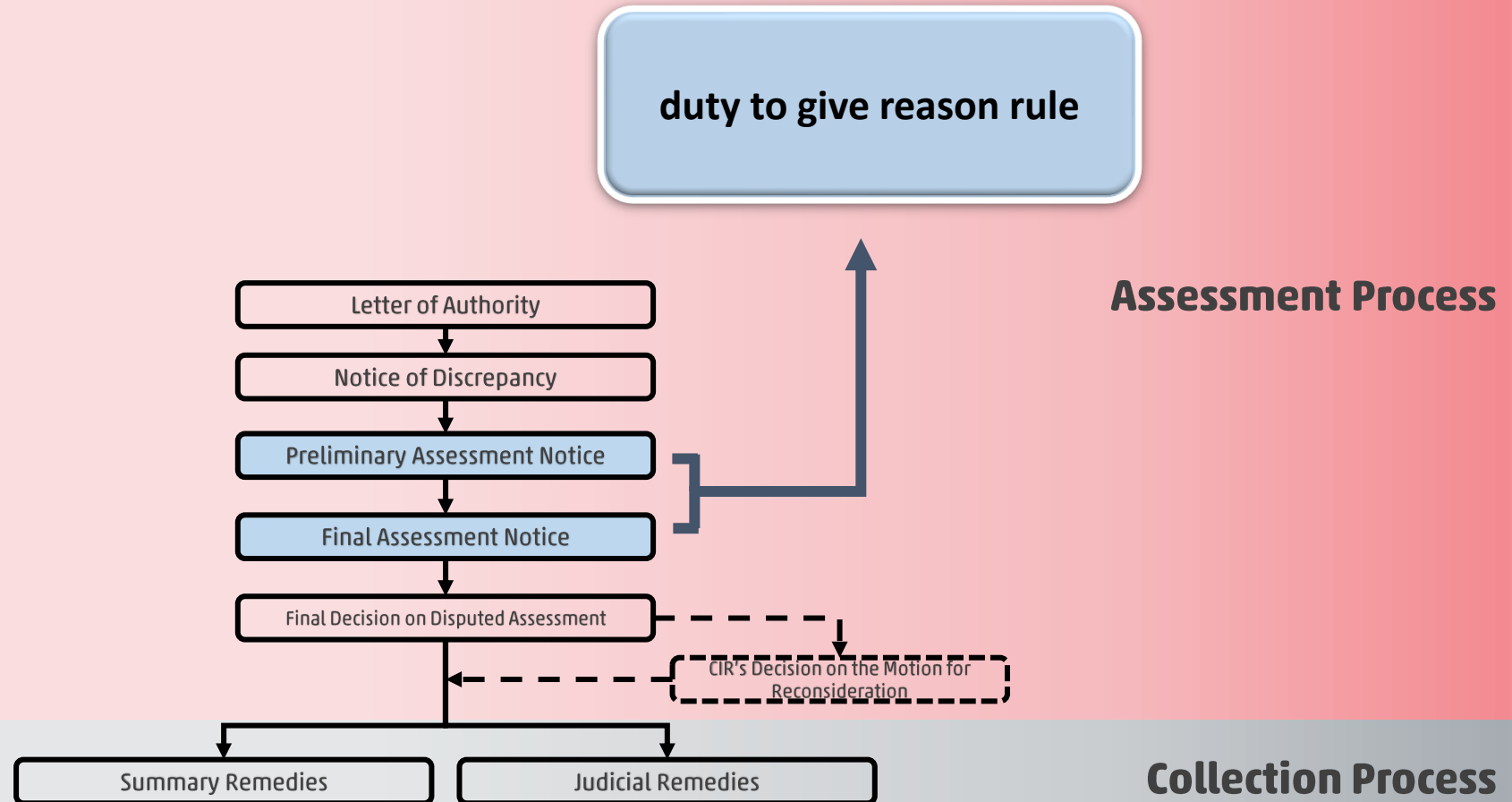


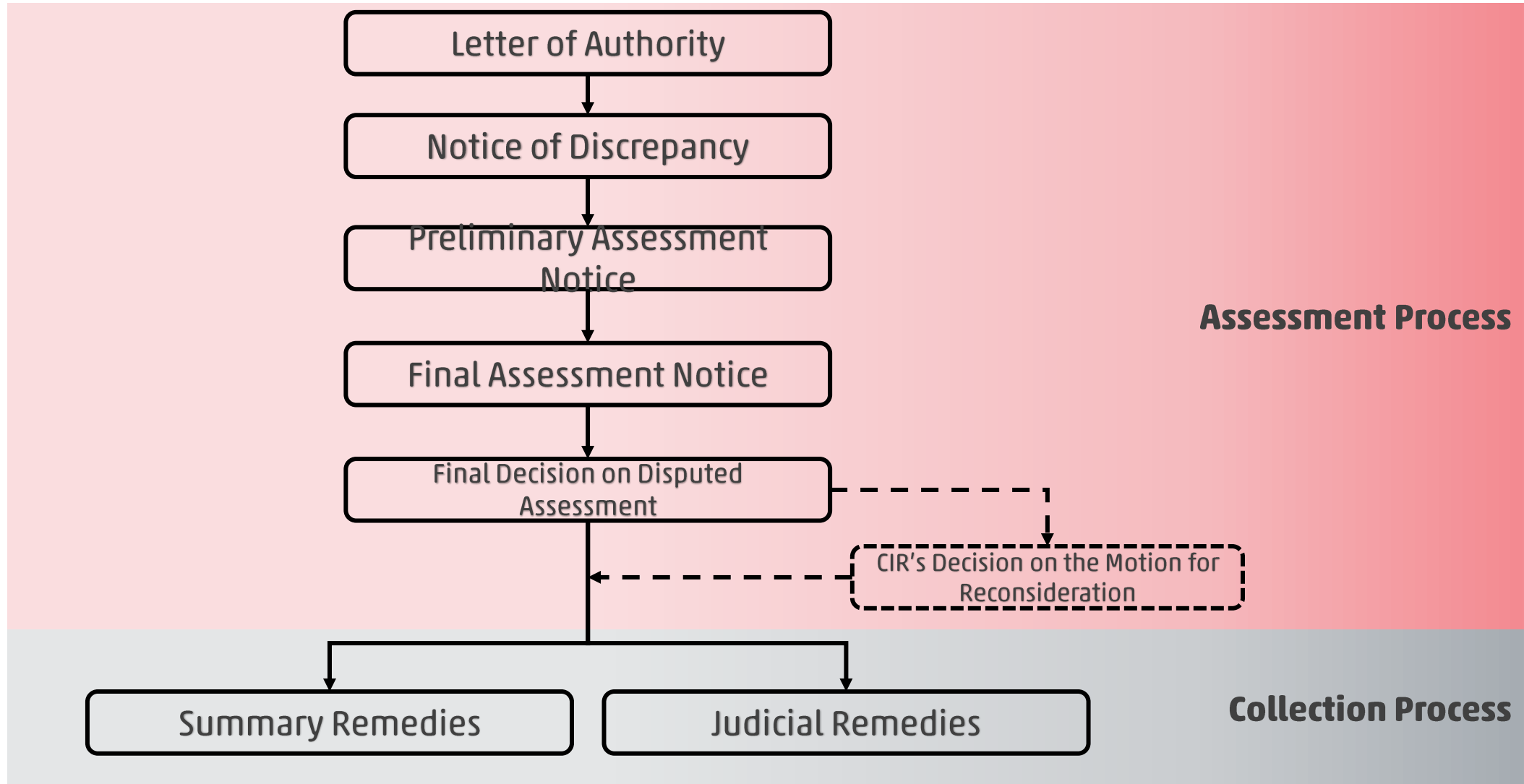




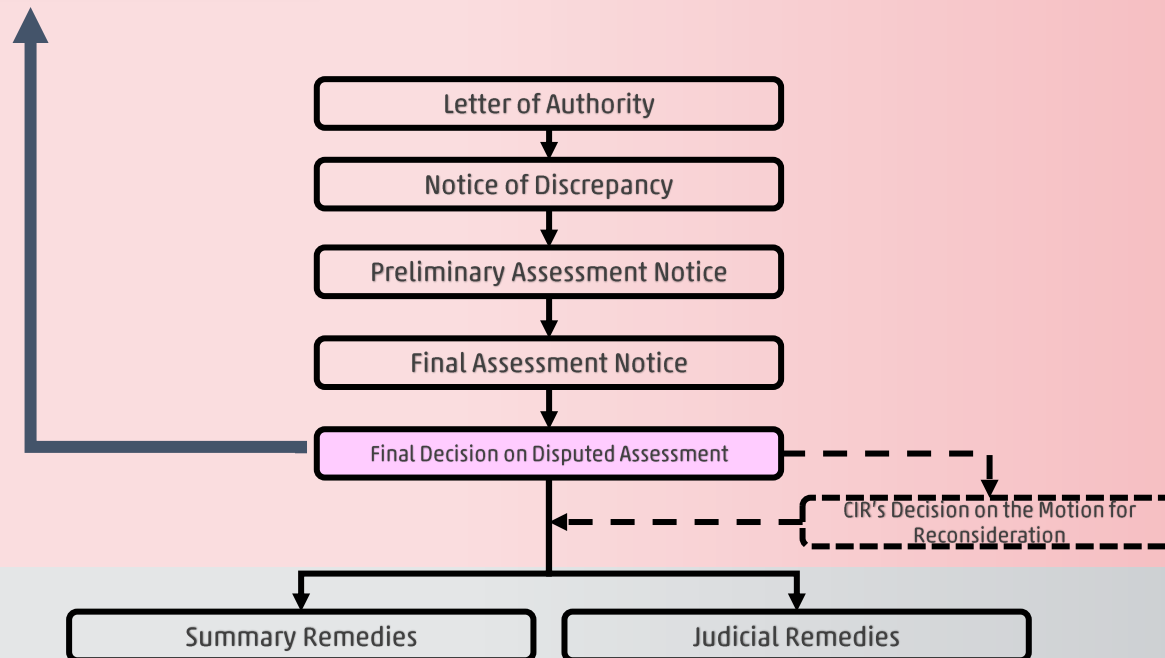






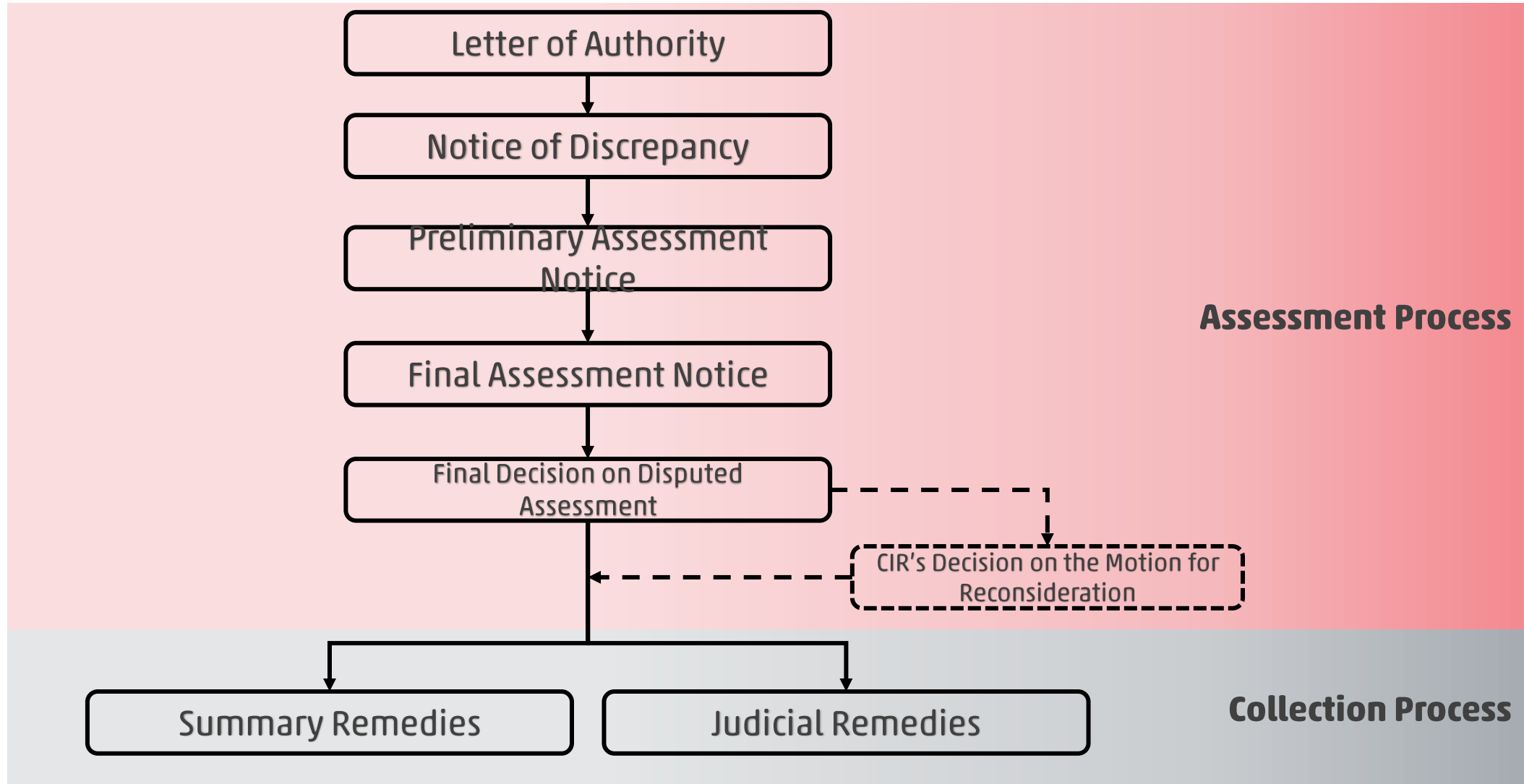


**Only one 180 day option**



**Assessment Process**

**Collection Process**



# BIR's Counter - Argument on Request for Cancellation and/or Withdrawal of the Warrant of Distraint and/or Levy

Please be informed that your request cannot be granted. Your pending **appeal with the Court of Tax Appeal (CTA) will not suspend enforcement of collection** in accordance with Republic Act (RA) No. 1125, as amended by RA No. 9282, which states that:

"Section 11 xxx No appeal taken to the Court of Tax Appeals (CTA) from the decision of the Commissioner of Internal Revenue on a disputed assessment shall suspend the payment, levy, distraint and/or sale of any property of the taxpayer for the satisfaction of his liability xxx"

**Unless the CTA suspends the collection of tax, this Office shall continue with the enforcement of administrative summary remedies** available to us, as provide by law.

"No appeal taken to the Court of Tax Appeals (CTA) from the decision of the Commissioner of Internal Revenue on **disputed assessment** shall suspend the payment, levy, distraint and/or sales of any property of the taxpayer for the satisfaction of his liability."

Bureau of  
Internal Revenue



"No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law."

RA 1125, as  
amended by RA 9282



# Disputed and Delinquent

the distraint of personal property only applies in case of "**delinquent tax**" or "**delinquent revenue to pay**"



**"SECTION. 207.**

(A) Distraint of Personal Property. – Upon the failure of the person owing any **delinquent tax or delinquent revenue** to pay the same at the time required, the Commissioner or his duly authorized representative, if the amount involved is in excess of One million pesos (P1,000,000), or the Revenue District Officer, if the amount involved is One million pesos (P1,000,000) or less, shall seize and distraint any goods, chattels, or effects, and the personal property..."



**Tax Code**



## BIR issuances related to Section 207 of the Tax Code (Ultra Vires)




Upon issuance by the Commissioner or Regional Director of the final decision on the **disputed assessment** against the taxpayer or upon issuance by the CTA in Division or *En Banc* of its decision upholding the assessment, Warrants of Dstraint and Garnishment, and/or Levy shall forthwith be immediately issued and served.

RMO  
39-  
2007

RMO  
42-  
2010

Upon issuance by the Commissioner or its authorized representatives of the final decision on the **disputed assessment** against the taxpayer or upon filing of a Petitioner for Review before the Court of Tax Appeals in Division or *En Banc* of its decision upholding the assessment, Warrants of Dstraint and Garnishment, and/or Levy shall forthwith be immediately issued and served...

**RM0 35-2019** defines a delinquent account as a tax due from a taxpayer arising from the audit of the BIR which had been issued Assessment Notices that have become final and executory due to the following instances:

-  **Failure to pay the tax due on the prescribed due date** provided in the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) **and for which no valid Protest**, whether a request for reconsideration or reinvestigation, has been filed within thirty (30) days from receipt thereof;
-  **Failure to file an appeal to the Court of Tax Appeals (CTA) or an administrative appeal before the Commissioner of Internal Revenue (CIR)** within thirty (30) days from receipt of the decision denying the request for reinvestigation or reconsideration; or
-  **Failure to file an appeal to the CTA** within thirty (30) days from receipt **of the Decision of the CIR** denying the taxpayer's administrative appeal to the Final Decision on Disputed Assessment (FDDA).

## BIR

No appeal taken to the Court of Tax Appeals (CTA) from the decision of the Commissioner of Internal Revenue on ***disputed assessment*** shall suspend the payment, levy, distraint and/or sales of any property of the taxpayer for the satisfaction of his liability.

## RA 1125, as amended

No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue xxx shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law.



# **HOW CAN A TAXPAYER DEFEND ITSELF FROM *LEVY AND GARNISHMENT?***

## Possible Remedies

Motion to  
Suspend  
Collection of  
Taxes

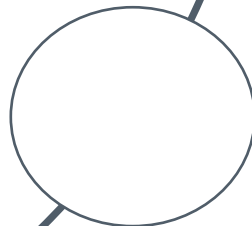
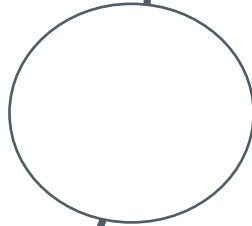
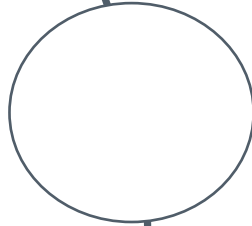
Motion to Quash  
Warrant of  
Distrain and/or  
Levy

# Motion to Suspend Collection of Taxes

Section 2, Rule 10 of the Revised Rules of the Court of Tax Appeals



Where the collection of the amount of the taxpayer's liability

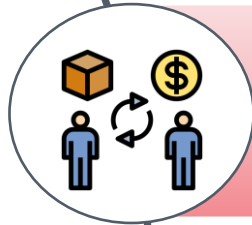


# Motion to Suspend Collection of Taxes

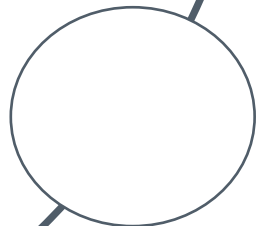
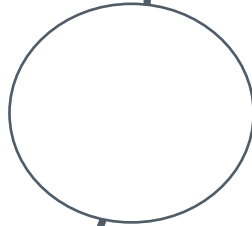
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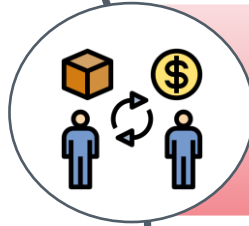


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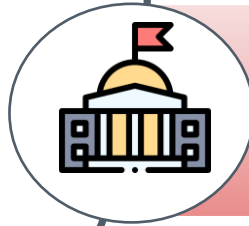
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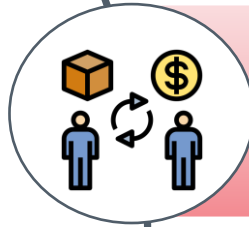
may jeopardize the interest of the Government or the taxpayer

# Motion to Suspend Collection of Taxes

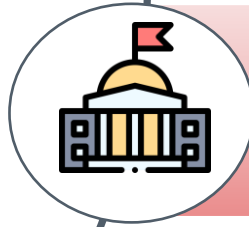
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Where the collection of the amount of the taxpayer's liability



sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws



may jeopardize the interest of the Government or the taxpayer



an interested party may file a motion for the suspension of the collection of the tax liability

# Motion for Suspension is Similar to Injunction and TRO

An injunction and a TRO may be issued only upon proof of

A clear legal right of the complainant

A violation of that right and the invasion is material and substantial

A permanent and urgent necessity for the writ to prevent serious damage

## Warrant of Arrest vs Warrant of Distraint and/or Levy

Both warrants are issued to ensure enforcement of the order of the proper officer.

In a warrant of arrest, the accused is detained pending the resolution of the criminal charges filed against him/her.

A WDL seizes the property of the taxpayer pending the resolution of the assessment against him/her.

Both warrants may be quashed when it will jeopardize the rights of the person who are subject of the warrants.



# **WHAT ARE THE CURRENT AND EMERGING JURISPRUDENCE THAT REDEFINE TAXPAYER'S RIGHTS AND REMEDIES?**

## ***Republic v. Ker & Company, Ltd.***

*G.R. No. L-21609, September 29, 1966*

Did the pendency of the taxpayer's appeal in the CTA and in the SC have the effect of **legally preventing the CIR from instituting an action in the Court of First Instance for the collection of the tax?** The SC's view is that it did.

## ***Republic v. Ker & Company, Ltd.***

*G.R. No. L-21609, September 29, 1966*

From when the taxpayer filed a petition for review in the CTA contesting the legality of the assessments, until the termination of its appeal in the SC, the CIR was prevented from filing an ordinary action in the Court of First Instance to collect the tax. **Besides, to do so would be to violate the judicial policy of avoiding multiplicity of suits and the *rule on lis pendens*.**

Under the circumstances, the CIR was in effect **prohibited** from collecting the tax in question.

## ***Sps. Pacquiao v. CTA-First Division and CIR*** *G.R. No. 213394, April 6, 2016*

The taxpayers question the necessity for the cash deposit and bond requirement, arguing that the CIR's assessment of their tax liabilities was highly questionable. At the same time, the taxpayers manifested that they were willing to file a bond for such reasonable amount to be fixed by the tax court.



## ***Sps. Pacquiao v. CTA-First Division and CIR,*** *G.R. No. 213394, April 6, 2016*

**The CTA noted that the amount sought to be collected was way beyond the taxpayers' net worth.** Considering that the taxpayers still needed to cover the costs of their daily subsistence, the CTA opined that the collection would be highly prejudicial to their interests and should, thus, be suspended pursuant to Section 11 of R.A. No. 1125, as amended. The CTA, however, saw no justification that the taxpayers should deposit less than the disputed amount.

## ***Sps. Pacquiao v. CTA-First Division and CIR,*** ***G.R. No. 213394, April 6, 2016***

The authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond is not simply confined to cases where prescription has set in.

Whenever it is determined by the courts that the **method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law**, the bond requirement under Section 11 of R.A. No. 1125 should be dispensed with.

# ***CIR v. CTA Second Division and QL Development, Inc.***

*G.R. No. 258947, March 29, 2022*

Prior to this case, it is a commonly held notion that the period to collect delinquent taxes, in general, is five (5) years from the date of the receipt of the FAN/FLD, regardless of whether the three (3) year or ten (10) year prescriptive period to assess apply.

## ***CIR v. CTA Second Division and QL Development, Inc.***

*G.R. No. 258947, March 29, 2022*

However, the Supreme Court clarified that the five (5) year prescriptive period to collect delinquent taxes apply only for the application of the extraordinary period of ten (10) years to assess in cases of false or fraudulent returns or failure to file a return. **If the assessment was issued within the ordinary three (3) year prescriptive period, then the BIR would only have three (3) years to initiate collection.**

## ***LRTA v. BIR***

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

Subsection 3.1.5 of Revenue Regulations No. 12-99 is clear that if the protest is elevated to the respondent Commissioner of Internal Revenue, **"the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner."**

## ***LRTA v. BIR***

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

Like the Final Decision on Disputed Assessment, all of these (PCL, FNBS, and WDL) 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.**

## ***LRTA v. BIR***

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

The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distrainment and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distrainment and/or Levy, and the June 9, 2014 denying the request for reconsideration **all emanated from a non-demandable assessment.** As such, **all were void and should be of no force and effect.**

What if the Regional office of the BIR issue a warrant of distraint and levy while the administrative appeal is pending with the Commissioner?

When can a taxpayer elevate to the CTA an administrative appeal to the Commissioner?

Taxpayer has no choice but to wait for the decision of the Commissioner if he wants to question the assessment.

What if the Regional office pursue collection despite the administrative appeal that is pending before the Commissioner? What is the taxpayer's remedy?

Taxpayer must wait for the Decision of the Commissioner before going to the CTA.



Taxpayer must wait for the Decision of the Commissioner before going to the CTA.



# ***Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. CIR***

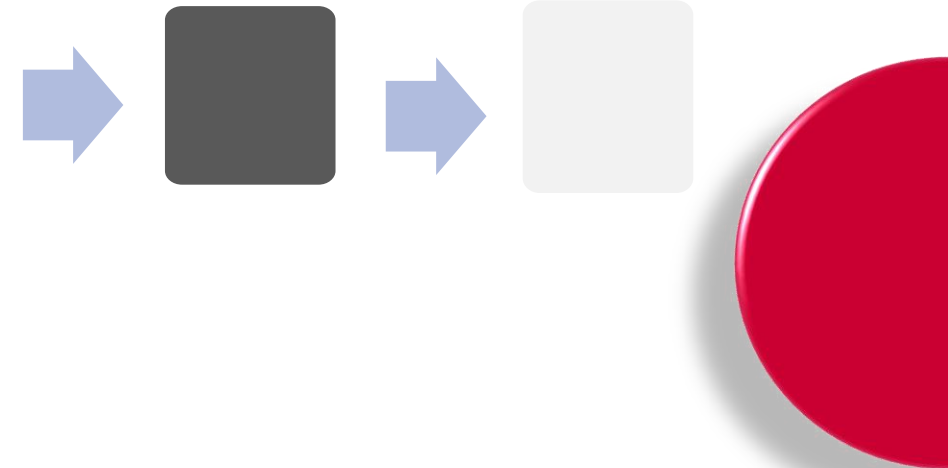
*G.R. No. 25810, April 19, 2022*

- Taxpayer submitted documents on September 19, 2016
- The statutory 180-day period lapsed on March 18, 2017
- Taxpayer had thirty (30) days, or until April 17, 2017, to elevate the case to the CTA
- Taxpayer filed its Petition only on June 2, 2017

# ***Nueva Edija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. CIR***

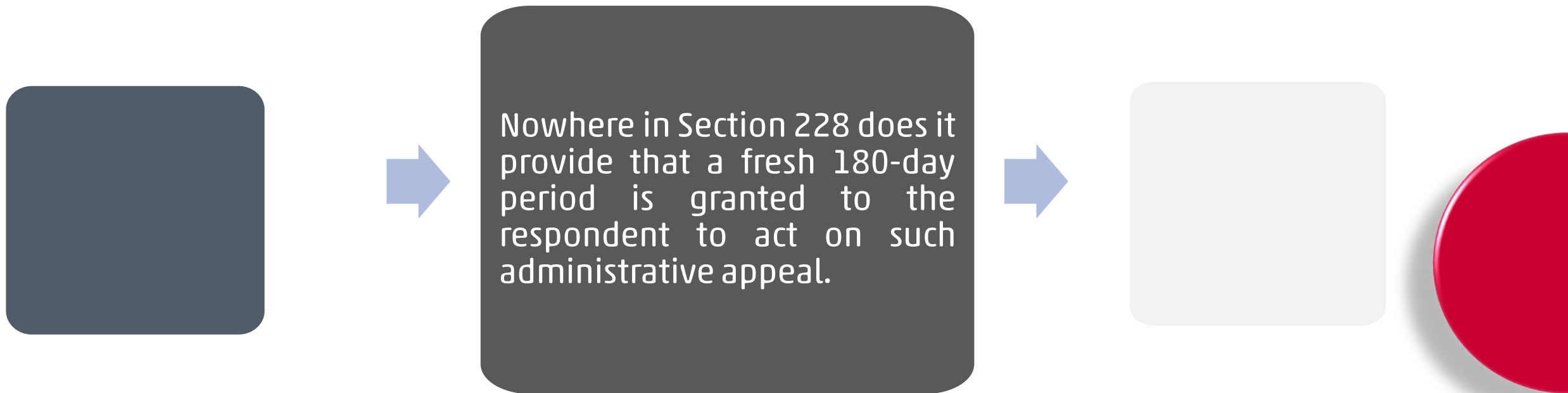
*G.R. No. 25810, April 19, 2022*

RR No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for alternative courses of action to the taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of the CIR, including the option of elevating the protest to the respondent himself through a request for reconsideration.



# ***Nueva Edija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. CIR***

*G.R. No. 25810, April 19, 2022*



Nowhere in Section 228 does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal.

# ***Nueva Edija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. CIR***

*G.R. No. 25810, April 19, 2022*



The taxpayer's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law.

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**THANK YOU**