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ART. 291. Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

x x x x x x x x x

Since petitioner's demand for an award of disability benefits is a money claim arising from his employment, Article 291 of the Labor Code applies. From the time petitioner was declared permanently and totally disabled on August 21, 1990 which gave rise to his entitlement to disability benefits up to the time that he filed the complaint on June 11, 1997, more than three years have elapsed thereby effectively barring his claim.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated March 30, 2001 in CA-G.R. SP No. 50615 which affirmed the Decision of the National Labor Relations Commission dismissing petitioner's complaint for disability and other benefits for lack of merit, and the Resolution dated October 5, 2001 denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

Panganiban, C.J. (Chairperson), Austria-Martinez, Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

FIRST DIVISION

[G.R. No. 153793. August 29, 2006]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **JULIANE BAIER-NICKEL, as represented by Marina Q. Guzman (Attorney-in-fact),** *respondent.*

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SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; TAX ON INCOME; TAX ON NONRESIDENT ALIEN INDIVIDUAL; NON-RESIDENT ALIENS, WHETHER OR NOT ENGAGED IN TRADE OR BUSINESS, ARE SUBJECT TO PHILIPPINE INCOME TAXATION ON THEIR INCOME RECEIVED FROM ALL SOURCES WITHIN THE PHILIPPINES.**— [N]on-resident aliens, whether or not engaged in trade or business, are subject to Philippine income taxation on their income received from all sources within the Philippines. Thus, the keyword in determining the taxability of non-resident aliens is the income's "source."

2. **ID.; ID.; ID.; SOURCE OF INCOME; RELATES TO THE PROPERTY, ACTIVITY OR SERVICE THAT PRODUCES THE INCOME.**— The Court reiterates the rule that "source of income" relates to the property, activity or service that produced the income. With respect to rendition of labor or personal service, as in the instant case, it is the place where the labor or service was performed that determines the source of the income. There is therefore no merit in petitioner's interpretation which equates source of income in labor or personal service with the residence of the payor or the place of payment of the income.

3. **ID.; TAX REFUNDS; CONSTRUED STRICTLY AGAINST THE TAXPAYER, FOR TAX REFUNDS ARE IN THE NATURE OF TAX EXEMPTIONS.**— The settled rule is that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the taxpayer. To those therefore, who claim a refund rest the burden of proving that the transaction subjected to tax is actually exempt from taxation.

4. **ID.; ID.; ID.; CASE AT BAR.**— In the instant case, the appointment letter of respondent as agent of JUBANITEX stipulated that the activity or the service which would entitle her to 10% commission income, are "sales actually concluded and collected through [her] efforts." What she presented as evidence to prove that she performed income producing activities abroad, were copies of documents she allegedly faxed to JUBANITEX and bearing instructions as to the sizes of, or designs and fabrics to be used in the finished products as well as samples of sales

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orders purportedly relayed to her by clients. However, these documents do not show whether the instructions or orders faxed ripened into concluded or collected sales in Germany. At the very least, these pieces of evidence show that while respondent was in Germany, she sent instructions/orders to JUBANITEX. As to whether these instructions/orders gave rise to consummated sales and whether these sales were truly concluded in Germany, respondent presented no such evidence. Neither did she establish reasonable connection between the orders/instructions faxed and the reported monthly sales purported to have transpired in Germany. The paucity of respondent's evidence was even noted by Atty. Minerva Pacheco, petitioner's counsel at the hearing before the Court of Tax Appeals. She pointed out that respondent presented no contracts or orders signed by the customers in Germany to prove the sale transactions therein. Likewise, in her Comment to the Formal Offer of respondent's evidence, she objected to the admission of the faxed documents bearing instruction/orders marked as Exhibits "R", "V", "W", and "X", for being self serving. The concern raised by petitioner's counsel as to the absence of substantial evidence that would constitute proof that the sale transactions for which respondent was paid commission actually transpired outside the Philippines, is relevant because respondent stayed in the Philippines for 89 days in 1995. Except for the months of July and September 1995, respondent was in the Philippines in the months of March, May, June, and August 1995, the same months when she earned commission income for services allegedly performed abroad. Furthermore, respondent presented no evidence to prove that JUBANITEX does not sell embroidered products in the Philippines and that her appointment as commission agent is **exclusively** for Germany and other European markets. In sum, we find that the faxed documents presented by respondent did not constitute substantial evidence, or that relevant evidence that a reasonable mind might accept as adequate to support the conclusion that it was in Germany where she performed the income producing service which gave rise to the reported monthly sales in the months of March and May to September of 1995. She thus failed to discharge the burden of proving that her income was from sources outside the Philippines and exempt from the application of our income tax law. Hence, the claim for tax refund should be denied.

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5. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— The Court notes that in *Commissioner of Internal Revenue v. Baier-Nickel*, a previous case for refund of income withheld from respondent's remunerations for services rendered abroad, the Court in a Minute Resolution dated February 17, 2003, sustained the ruling of the Court of Appeals that respondent is entitled to refund the sum withheld from her sales commission income for the year **1994**. This ruling has no bearing in the instant controversy because the subject matter thereof is the income of respondent for the year 1994 while, the instant case deals with her income in **1995**. Otherwise, stated, *res judicata* has no application here. Its elements are: (1) there must be a final judgment or order; (2) the court that rendered the judgment must have jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; (4) there must be between the two cases identity of parties, of subject matter, and of causes of action. The instant case, however, did not satisfy the fourth requisite because there is no identity as to the subject matter of the previous and present case of respondent which deals with income earned and activities performed for different taxable years.

APPEARANCES OF COUNSEL

The Chief Legal Division (BIR) for petitioner.
V.C. Mamalateo & Associates for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Petitioner Commissioner of Internal Revenue (CIR) appeals from the January 18, 2002 Decision[1] of the Court of Appeals in CA-G.R. SP No. 59794, which granted the tax refund of respondent Juliane Baier-Nickel and reversed the June 28, 2000

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[1] Penned by Associate Justice Salvador J. Valdez, Jr. and concurred in by Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr.; *rollo*, pp. 47-57.

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Decision[2] of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5633. Petitioner also assails the May 8, 2002 Resolution[3] of the Court of Appeals denying its motion for reconsideration.

The facts show that respondent Juliane Baier-Nickel, a non-resident German citizen, is the President of JUBANITEX, Inc., a domestic corporation engaged in "[m]anufacturing, marketing on wholesale only, buying or otherwise acquiring, holding, importing and exporting, selling and disposing embroidered textile products."[4] Through JUBANITEX's General Manager, Marina Q. Guzman, the corporation appointed and engaged the services of respondent as commission agent. It was agreed that respondent will receive 10% sales commission on all sales actually concluded and collected through her efforts.[5]

In 1995, respondent received the amount of ₱1,707,772.64, representing her sales commission income from which JUBANITEX withheld the corresponding 10% withholding tax amounting to ₱170,777.26, and remitted the same to the Bureau of Internal Revenue (BIR). On October 17, 1997, respondent filed her 1995 income tax return reporting a taxable income of ₱1,707,772.64 and a tax due of ₱170,777.26.[6]

On April 14, 1998, respondent filed a claim to refund the amount of ₱170,777.26 alleged to have been mistakenly withheld and remitted by JUBANITEX to the BIR. Respondent contended that her sales commission income is not taxable in the Philippines because the same was a compensation for her services rendered in Germany and therefore considered as income from sources outside the Philippines.

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[2] Penned by Presiding Judge Ernesto D. Acosta, with Associate Judges Ramon O. De Veyra, concurring and Amancio Q. Saga, dissenting; *rollo*, pp. 78-91.

[3] *Rollo*, pp. 59-61.

[4] General Information Sheet of JUBANITEX, Inc., *rollo*, p. 211.

[5] *Rollo*, p. 100.

[6] Exhibit "A", Folder of Exhibits, unpaged.

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The next day, April 15, 1998, she filed a petition for review with the CTA contending that no action was taken by the BIR on her claim for refund.[7] On June 28, 2000, the CTA rendered a decision denying her claim. It held that the commissions received by respondent were actually her remuneration in the performance of her duties as President of JUBANITEX and not as a mere sales agent thereof. The income derived by respondent is therefore an income taxable in the Philippines because JUBANITEX is a domestic corporation.

On petition with the Court of Appeals, the latter reversed the Decision of the CTA, holding that respondent received the commissions as sales agent of JUBANITEX and not as President thereof. And since the "source" of income means the activity or service that produce the income, the sales commission received by respondent is not taxable in the Philippines because it arose from the marketing activities performed by respondent in Germany. The dispositive portion of the appellate court's Decision, reads:

> WHEREFORE, premises considered, the assailed decision of the Court of Tax Appeals dated June 28, 2000 is hereby REVERSED and SET ASIDE and the respondent court is hereby directed to grant petitioner a tax refund in the amount of Php 170,777.26.
>
> SO ORDERED.[8]

Petitioner filed a motion for reconsideration but was denied.[9] Hence, the instant recourse.

Petitioner maintains that the income earned by respondent is taxable in the Philippines because the source thereof is JUBANITEX, a domestic corporation located in the City of Makati. It thus implied that source of income means the physical source where the income came from. It further argued that since respondent is the President of JUBANITEX, any remuneration

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[7] Petition for Review with the CTA, records, p. 4.

[8] *Rollo*, p. 57.

[9] Resolution dated May 8, 2002; *rollo*, pp. 59-61.

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she received from said corporation should be construed as payment of her overall managerial services to the company and should not be interpreted as a compensation for a distinct and separate service as a sales commission agent.

Respondent, on the other hand, claims that the income she received was payment for her marketing services. She contended that income of nonresident aliens like her is subject to tax only if the source of the income is within the Philippines. Source, according to respondent is the *situs* of the activity which produced the income. And since the source of her income were her marketing activities in Germany, the income she derived from said activities is not subject to Philippine income taxation.

The issue here is whether respondent's sales commission income is taxable in the Philippines.

Pertinent portion of the National Internal Revenue Code (NIRC), states:

SEC. 25. Tax on Nonresident Alien Individual. –

(A) Nonresident Alien Engaged in Trade or Business Within the Philippines. –

(1) In General. – A nonresident alien individual engaged in trade or business in the Philippines shall be subject to an income tax in the same manner as an individual citizen and a resident alien individual, on taxable income received from all sources within the Philippines. A nonresident alien individual who shall come to the Philippines and stay therein for an aggregate period of more than one hundred eighty (180) days during any calendar year shall be deemed a 'nonresident alien doing business in the Philippines,' Section 22(G) of this Code notwithstanding.

x x x x x x x x x

(B) Nonresident Alien Individual Not Engaged in Trade or Business Within the Philippines. – There shall be levied, collected and paid for each taxable year upon the entire income received from all sources within the Philippines by every nonresident alien individual not engaged in trade or business within the Philippines x x x a tax equal to twenty-five percent (25%) of such income. x x x

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Pursuant to the foregoing provisions of the NIRC, non-resident aliens, whether or not engaged in trade or business, are subject to Philippine income taxation on their income received from all sources within the Philippines. Thus, the keyword in determining the taxability of non-resident aliens is the income's "source." In construing the meaning of "source" in Section 25 of the NIRC, resort must be had on the origin of the provision.

The first Philippine income tax law enacted by the Philippine Legislature was Act No. 2833,[10] which took effect on January 1, 1920.[11] Under Section 1 thereof, nonresident aliens are likewise subject to tax on income "from all sources within the Philippine Islands," thus –

> SECTION 1. (a) There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the Philippine Islands, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources within the Philippine Islands by every individual, a nonresident alien, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

Act No. 2833 substantially reproduced the United States (U.S.) Revenue Law of 1916 as amended by U.S. Revenue Law of 1917.[12] Being a law of American origin, the authoritative decisions of the official charged with enforcing it in the U.S. have peculiar persuasive force in the Philippines.[13]

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[10] An Act establishing the income tax law, making other provisions relating to said tax, and amending certain sections of Act Numbered Twenty-seven hundred and eleven.

[11] F. Dalupan, *National Internal Revenue Code Annotated*, 1964 ed., Vol. 1, p. 25.

[12] *Id.*

[13] J. Arañas, *Annotations and Jurisprudence on the National Internal Revenue Code*, as Amended, 1963 ed., Vol. 1, p. 34.

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The Internal Revenue Code of the U.S. enumerates specific types of income to be treated as from sources within the U.S. and specifies when similar types of income are to be treated as from sources outside the U.S.[14] Under the said Code, compensation for labor and personal services performed in the U.S., is generally treated as income from U.S. sources; while compensation for said services performed outside the U.S., is treated as income from sources outside the U.S.[15] A similar provision is found in Section 42 of our NIRC, thus:

SEC. 42. x x x

(A) Gross Income From Sources Within the Philippines. x x x

x x x x x x x x x

(3)Services. – Compensation for labor or personal services performed in the Philippines;

x x x x x x x x x

(C) Gross Income From Sources Without the Philippines. x x x

x x x x x x x x x

(3)Compensation for labor or personal services performed without the Philippines;

The following discussions on sourcing of income under the Internal Revenue Code of the U.S., are instructive:

The Supreme Court has said, in a definition much quoted but often debated, that income may be derived from three possible sources only: (1) capital and/or (2) labor; and/or (3) the sale of capital assets. While the three elements of this attempt at definition need not be accepted as all-inclusive, they serve as useful guides in any inquiry into whether a particular item is from "sources within the United States" and suggest an investigation into the nature and location of the activities or property which produce the income.

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[14] 34 Am Jur 2d, ¶ 30651, p. 453 (2000).

[15] 34 Am Jur 2d, ¶ 30654, p. 453 (2000).

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If the income is from labor the place where the labor is done should be decisive; if it is done in this country, the income should be from "sources within the United States." If the income is from capital, the place where the capital is employed should be decisive; if it is employed in this country, the income should be from "sources within the United States." If the income is from the sale of capital assets, the place where the sale is made should be likewise decisive.

Much confusion will be avoided by regarding the term "source" in this fundamental light. It is not a place, it is an activity or property. As such, it has a situs or location, and if that situs or location is within the United States the resulting income is taxable to nonresident aliens and foreign corporations.

The intention of Congress in the 1916 and subsequent statutes was to discard the 1909 and 1913 basis of taxing nonresident aliens and foreign corporations and to make the test of taxability the "source," or situs of the activities or property which produce the income. The result is that, on the one hand, nonresident aliens and nonresident foreign corporations are prevented from deriving income from the United States free from tax, and, on the other hand, there is no undue imposition of a tax when the activities do not take place in, and the property producing income is not employed in, this country. Thus, if income is to be taxed, the recipient thereof must be resident within the jurisdiction, or the property or activities out of which the income issues or is derived must be situated within the jurisdiction so that the source of the income may be said to have a situs in this country.

The underlying theory is that the consideration for taxation is protection of life and property and that the income rightly to be levied upon to defray the burdens of the United States Government is that income which is created by activities and property protected by this Government or obtained by persons enjoying that protection.[16]

The important factor therefore which determines the source of income of personal services is not the residence of the payor, or the place where the contract for service is entered into, or

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[16] 12 J. Mertens, *The Law of Federal Income Taxation*, Section 45C:04, pp. 45C-12 to 45C-13 (1996). The 1957 edition thereof was cited in the dissenting opinion of Justice Florentino P. Feliciano in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*, G.R. Nos. 65773-74, April 30, 1987, 149 SCRA 395, 415-416.

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the place of payment, but the place where the services were actually rendered.[17]

In *Alexander Howden & Co., Ltd. v. Collector of Internal Revenue*,[18] the Court addressed the issue on the applicable source rule relating to reinsurance premiums paid by a local insurance company to a foreign insurance company in respect of risks located in the Philippines. It was held therein that the undertaking of the foreign insurance company to indemnify the local insurance company is the activity that produced the income. Since the activity took place in the Philippines, the income derived therefrom is taxable in our jurisdiction. Citing *Mertens, The Law of Federal Income Taxation*, the Court emphasized that the technical meaning of source of income is the property, activity or service that produced the same. Thus:

> The source of an income is the property, activity or service that produced the income. The reinsurance premiums remitted to appellants by virtue of the reinsurance contracts, accordingly, had for their source the undertaking to indemnify Commonwealth Insurance Co. against liability. Said undertaking is the activity that produced the reinsurance premiums, and the same took place in the Philippines. x x x the reinsured, the liabilities insured and the risk originally underwritten by Commonwealth Insurance Co., upon which the reinsurance premiums and indemnity were based, were all situated in the Philippines. x x x[19]

In *Commissioner of Internal Revenue v. British Overseas Airways Corporation* (BOAC),[20] the issue was whether BOAC, a foreign airline company which does not maintain any flight to and from the Philippines is liable for Philippine income taxation in respect of sales of air tickets in the Philippines, through a general sales agent relating to the carriage of passengers and cargo between two points both outside the Philippines.

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[17] 12 J. Mertens. *The Law of Federal Income Taxation*. Section 45C:11, p. 45C-32 (1996).

[18] 121 Phil. 579 (1965).

[19] *Id.* at 583.

[20] *Supra* note 16.

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Ruling in the affirmative, the Court applied the case of *Alexander Howden & Co., Ltd. v. Collector of Internal Revenue*, and reiterated the rule that the source of income is that "activity" which produced the income. It was held that the "sale of tickets" in the Philippines is the "activity" that produced the income and therefore BOAC should pay income tax in the Philippines because it undertook an income producing activity in the country.

Both the petitioner and respondent cited the case of *Commissioner of Internal Revenue v. British Overseas Airways Corporation* in support of their arguments, but the correct interpretation of the said case favors the theory of respondent that it is the *situs* of the activity that determines whether such income is taxable in the Philippines. The conflict between the majority and the dissenting opinion in the said case has nothing to do with the underlying principle of the law on sourcing of income. In fact, both applied the case of *Alexander Howden & Co., Ltd. v. Collector of Internal Revenue*. The divergence in opinion centered on whether the sale of tickets in the Philippines is to be construed as the "activity" that produced the income, as viewed by the majority, or merely the physical source of the income, as ratiocinated by Justice Florentino P. Feliciano in his dissent. The majority, through Justice Ameurfina Melencio-Herrera, as *ponente*, interpreted the sale of tickets as a business activity that gave rise to the income of BOAC. Petitioner cannot therefore invoke said case to support its view that source of income is the physical source of the money earned. If such was the interpretation of the majority, the Court would have simply stated that source of income is not the business activity of BOAC but the place where the person or entity disbursing the income is located or where BOAC physically received the same. But such was not the import of the ruling of the Court. It even explained in detail the **business activity** undertaken by BOAC in the Philippines to pinpoint the taxable activity and to justify its conclusion that BOAC is subject to Philippine income taxation. Thus –

> BOAC, during the periods covered by the subject assessments, maintained a general sales agent in the Philippines. That general sales agent, from 1959 to 1971, "was engaged in (1) selling and issuing

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tickets; (2) breaking down the whole trip into series of trips — each trip in the series corresponding to a different airline company; (3) receiving the fare from the whole trip; and (4) consequently allocating to the various airline companies on the basis of their participation in the services rendered through the mode of interline settlement as prescribed by Article VI of the Resolution No. 850 of the IATA Agreement." Those activities were in exercise of the functions which are normally incident to, and are in progressive pursuit of, the purpose and object of its organization as an international air carrier. In fact, the regular sale of tickets, its main activity, is the very lifeblood of the airline business, the generation of sales being the paramount objective. There should be no doubt then that BOAC was "engaged in" business in the Philippines through a local agent during the period covered by the assessments. x x x[21]

x x x x x x x x x

The source of an income is the property, activity or service that produced the income. For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines. In BOAC's case, the sale of tickets in the Philippines is the activity that produces the income. The tickets exchanged hands here and payments for fares were also made here in Philippine currency. The situs of the source of payments is the Philippines. The flow of wealth proceeded from, and occurred within, Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government.

A transportation ticket is not a mere piece of paper. When issued by a common carrier, it constitutes the contract between the ticket-holder and the carrier. It gives rise to the obligation of the purchaser of the ticket to pay the fare and the corresponding obligation of the carrier to transport the passenger upon the terms and conditions set forth thereon. The ordinary ticket issued to members of the traveling public in general embraces within its terms all the elements to constitute it a valid contract, binding upon the parties entering into the relationship.[22]

The Court reiterates the rule that "source of income" relates to the property, activity or service that produced the income.

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[21] *Id.* at 405-406.

[22] *Id.* at 407-408.

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With respect to rendition of labor or personal service, as in the instant case, it is the place where the labor or service was performed that determines the source of the income. There is therefore no merit in petitioner's interpretation which equates source of income in labor or personal service with the residence of the payor or the place of payment of the income.

Having disposed of the doctrine applicable in this case, we will now determine whether respondent was able to establish the factual circumstances showing that her income is exempt from Philippine income taxation.

The decisive factual consideration here is not the capacity in which respondent received the income, but the sufficiency of evidence to prove that the services she rendered were performed in Germany. Though not raised as an issue, the Court is clothed with authority to address the same because the resolution thereof will settle the vital question posed in this controversy.[23]

The settled rule is that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the taxpayer.[24] To those therefore, who claim a refund rest the burden of proving that the transaction subjected to tax is actually exempt from taxation.

In the instant case, the appointment letter of respondent as agent of JUBANITEX stipulated that the activity or the service which would entitle her to 10% commission income, are "sales actually concluded and collected through [her] efforts."[25] What she presented as evidence to prove that she performed income producing activities abroad, were copies of documents she allegedly faxed to JUBANITEX and bearing instructions as to the sizes of, or designs and fabrics to be used in the finished

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[23] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 312.

[24] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482, 500.

[25] *Rollo*, p. 100.

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products as well as samples of sales orders purportedly relayed to her by clients. However, these documents do not show whether the instructions or orders faxed ripened into concluded or collected sales in Germany. At the very least, these pieces of evidence show that while respondent was in Germany, she sent instructions/orders to JUBANITEX. As to whether these instructions/orders gave rise to consummated sales and whether these sales were truly concluded in Germany, respondent presented no such evidence. Neither did she establish reasonable connection between the orders/instructions faxed and the reported monthly sales purported to have transpired in Germany.

The paucity of respondent's evidence was even noted by Atty. Minerva Pacheco, petitioner's counsel at the hearing before the Court of Tax Appeals. She pointed out that respondent presented no contracts or orders signed by the customers in Germany to prove the sale transactions therein.[26] Likewise, in her Comment to the Formal Offer of respondent's evidence, she objected to the admission of the faxed documents bearing instruction/orders marked as Exhibits "R",[27] "V", "W", and "X",[28] for being self serving.[29] The concern raised by petitioner's counsel as to the absence of substantial evidence that would constitute proof that the sale transactions for which respondent was paid commission actually transpired outside the Philippines, is relevant because respondent stayed in the Philippines for 89 days in 1995. Except for the months of July and September 1995, respondent was in the Philippines in the months of March, May, June, and August 1995,[30] the same months when she earned commission income for services allegedly performed abroad. Furthermore, respondent presented no evidence to prove that JUBANITEX does not sell embroidered products in the

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[26] TSN, November 10, 1998, pp. 49-55.

[27] *Rollo*, pp. 95-99.

[28] Folder of Exhibits, unpaged.

[29] Records, pp. 74-75.

[30] Respondent's Formal Offer of Evidence, *rollo*, p. 202.

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Philippines and that her appointment as commission agent is **exclusively** for Germany and other European markets.

In sum, we find that the faxed documents presented by respondent did not constitute substantial evidence, or that relevant evidence that a reasonable mind might accept as adequate to support the conclusion[31] that it was in Germany where she performed the income producing service which gave rise to the reported monthly sales in the months of March and May to September of 1995. She thus failed to discharge the burden of proving that her income was from sources outside the Philippines and exempt from the application of our income tax law. Hence, the claim for tax refund should be denied.

The Court notes that in *Commissioner of Internal Revenue v. Baier-Nickel*,[32] a previous case for refund of income withheld from respondent's remunerations for services rendered abroad, the Court in a Minute Resolution dated February 17, 2003,[33] sustained the ruling of the Court of Appeals that respondent is entitled to refund the sum withheld from her sales commission income for the year **1994**. This ruling has no bearing in the instant controversy because the subject matter thereof is the income of respondent for the year 1994 while, the instant case deals with her income in **1995**. Otherwise, stated, *res judicata* has no application here. Its elements are: (1) there must be a final judgment or order; (2) the court that rendered the judgment must have jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; (4) there must be between the two cases identity of parties, of subject matter, and of causes of action.[34] The instant case, however, did not satisfy the fourth requisite because there is no identity as to the subject matter

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[31] *Transglobe International, Inc. v. Court of Appeals*, 361 Phil. 727, 738 (1999).

[32] G.R. No. 156305.

[33] It became final and executory on March 31, 2003.

[34] *Barbacina v. Court of Appeals*, G.R. No. 135365, August 31, 2004, 437 SCRA 300, 307.

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of the previous and present case of respondent which deals with income earned and activities performed for different taxable years.

WHEREFORE, the petition is *GRANTED* and the January 18, 2002 Decision and May 8, 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 59794, are *REVERSED* and *SET ASIDE*. The June 28, 2000 Decision of the Court of Tax Appeals in C.T.A. Case No. 5633, which denied respondent's claim for refund of income tax paid for the year 1995 is *REINSTATED*.

SO ORDERED.

Panganiban, C.J. (Chairperson), Austria-Martinez, Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

SECOND DIVISION

[G.R. No. 155150. August 29, 2006]

EMELITA A. RAMIREZ, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and SUERTE STEEL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE CONCLUSIVE ON THE PARTIES AND ARE NOT REVIEWABLE BY THE SUPREME COURT; CASE AT BAR.— In *Gustilo v. Wyeth Philippines, Inc.*, we reiterated the well-established rule that "findings of fact by the Court of Appeals are conclusive on the parties and are not reviewable by this Court xxx. The rationale behind this doctrine is that review of the findings of fact by the Court of Appeals is not a function that the Supreme Court normally undertakes." The appellate court found that petitioner violated Company