RONALD J. & LYNN M. VARCAK ' STATE OF ALABAMA
207 Mayfield Lane, N.E. DEPARTMENT OF REVENUE
Jacksonville, AL 36265, ' ADMINISTRATIVE LAW DIVISION

Taxpayers, ' DOCKET NO. INC. 97-420

v. '

STATE OF ALABAMA '
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department partially denied a refund of 1995 income tax requested by Ronald J. and Lynn M. Varcak (jointly ATaxpayers@). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(c)(5)a. A hearing was conducted on April 8, 1998. Ronald J. Varcak (individually ATaxpayer@) appeared at the hearing. Assistant counsel David Avery represented the Department.

This case involves two issues:

(1) Was the Taxpayer entitled to the $5,000 rural physician tax credit in 1995. Code of Ala. 1975, ' 40-18-130, et seq.; and,

(2) Should the Taxpayers be granted relief because the Department failed to file its Answer within 90 days, as required by Code of Ala. 1975, ' 40-2A-9(c).

The Taxpayer is a doctor, and had admission privileges at Jacksonville Hospital in Jacksonville, Alabama during 1995. Jacksonville Hospital has an emergency room, has less than 105 beds, and is less than 20 miles from the nearest acute care hospital.

The Taxpayer practiced at both Jacksonville Hospital and at a rural health clinic in Piedmont, Alabama during 1995. The Piedmont clinic is a provider-based rural health clinic owned by Jacksonville Hospital.

Jacksonville Hospital is reimbursed by Medicare as an urban hospital. The Medicare urban reimbursement rate is greater than the Medicare rural reimbursement rate because it costs more to operate urban hospitals. Jacksonville Hospital is also reimbursed by Medicare for its costs associated with the Piedmont clinic. The Taxpayer testified that he does not know at what rate Jacksonville Hospital is reimbursed by Medicare for the Piedmont clinic.

The Taxpayers claimed the $5,000 rural physician tax credit allowed at ' 40-18-132 on their 1995 Alabama income tax return. The Department denied the credit, which reduced the Taxpayers= refund for the year. The Taxpayers appealed.

The Administrative Law Division notified the Department=s Legal Division of the appeal by notice dated October 27, 1997. The Department filed a ARequest for Production and Continuance@ on January 7, 1998. The Administrative Law Division entered a Preliminary Order on January 9, 1998 directing the Taxpayers to provide the requested information. The Preliminary Order also stated:

> AThe Department has also requested that the case be continued generally pending further investigation. Additional time will be allowed for the Department to investigate fully. However, Code of Ala. 1975, ' 40-2A-9(c) requires that the Legal Division must file an Answer within 90 days (30 days initial deadline plus 60 day extension). The Legal Division thus must file its Answer in the case within 90 days from when it was notified of the appeal on October 27, 1997.@

The Department filed its Answer on January 30, 1998. The Taxpayers filed a AMotion for Summary Judgment@ on February 17, 1998, requesting relief because the Department failed to file its Answer within the required 90 days.

ISSUE (1) - THE RURAL PHYSICIAN TAX CREDIT

Section 40-18-130, et seq. allows a $5,000 tax credit for any person qualifying as a rural physician. A Arural physician@ is defined as a physician that (a) resides in a small or rural community, and (b) has admission privileges to a small or rural hospital. ' 40-18-131(1).

A Asmall or rural community@ is defined as a community with less than 25,000 people that has a hospital with an emergency room. ' 40-18-131(2). The City of Jacksonville, Alabama has less than 25,000 residents (9,800), and Jacksonville Hospital has an emergency room. The first requirement of ' 40-18-131(1) is satisfied.

A hospital qualifies as a Asmall or rural hospital@, as defined at ' 40-18-131(3), and thus satisfies the second requirement of ' 40-18-131(1), if either of two criteria are met. First, the hospital must contain less than 105 beds and must be located more than 20 miles from another acute care hospital. ' 40-18-131(3)a. Jacksonville Hospital does not qualify as a small or rural hospital under subparagraph (3)a. because it is located less than 20 miles from another acute care hospital.

The second criteria is that the hospital must receive Medicare rural reimbursement from the federal government. ' 40-18-131(3)b. This issue thus turns on whether Jacksonville Hospital received Medicare rural reimbursement from the federal government in 1995.

The Taxpayer argues that Jacksonville Hospital received Medicare rural reimbursement, and thus qualified as a rural hospital, because it was reimbursed by Medicare for operating the rural clinic in Piedmont. I disagree.

Jacksonville Hospital was reimbursed by Medicare for its expenses at the Piedmont clinic. There is no evidence, however, that it received AMedicare rural reimbursement@ as required by ' 40-18-131(3)b. The Taxpayer concedes that he does not know at what rate Jacksonville Hospital was reimbursed for operating the Piedmont clinic. The fact that the Piedmont facility is referred to as a rural clinic does not establish that Jacksonville Hospital received Medicare rural reimbursement for operating the clinic.

A tax credit is a matter of legislative grace, and the taxpayer claiming the credit must establish that he is entitled to the credit. Hauptli v. Commissioner, 951 F.2d 1193 (10th Cir. 1991); Schiff v. United States, 492 F.2d 348 (6th Cir. 1991); Anselmo v. Commissioner, 757 F.2d 1208 (11th Cir. 1985). The Taxpayer failed to prove that Jacksonville Hospital received Medicare rural reimbursement from the federal government, and thus failed to prove that he is entitled to the credit in this case.

In addition, even if Jacksonville Hospital received Medicare rural reimbursement because of the Piedmont clinic, there is a valid argument that the Hospital still would not qualify as a rural hospital for purposes of the credit.

The intent of the credit is to entice physicians to practice at rural hospitals in rural areas. Jacksonville Hospital, standing alone, does not qualify as a rural hospital, as defined at ' 40-18-131(3), because it is located less than 20 miles from the next acute care hospital, and it receives Medicare urban reimbursement for its services performed in Jacksonville.

If the Taxpayer=s position is accepted, a physician could practice full-time and have admission privileges at a hospital that does not, by itself, qualify as a rural hospital, yet

still claim the $5,000 credit if the hospital also happens to own a rural clinic. I do not believe that was intended by the Legislature.

ISSUE (2) - THE DEPARTMENT=S FAILURE TO TIMELY FILE AN ANSWER

The Taxpayers= claim they should be granted relief because the Department failed to file its Answer within 90 days, as required by ' 40-2A-9(c). I must agree.

Section 40-2A-9(c) requires the Department to file an Answer within 30 days. The statute also provides that the Administrative Law Judge Ashall have discretion...to allow the legal division additional time, not to exceed 60 days, within which to file an answer.@ The Department filed its Answer in this case on January 30, 1998, more than 90 days from when it was notified of the appeal.

The Administrative Law Division has held that the 90 day deadline is mandatory. If the Department fails to comply, the taxpayer is entitled to relief. State of Alabama v. Sungard Business Systems, Inc., U. 94-310 (Admin. Law Div. 1/10/95); State of Alabama v. Bishop-Parker Furniture Co., S. 93-252 (Admin. Law Div. 3/31/94). In Sungard Business Systems, the Administrative Law Division held as follows:

> AThe same issue was decided in a prior Administrative Law Division case, State v. Bishop-Parker Furniture Company, Docket No. S. 93-252, decided March 31, 1994. In that case, the Department failed to file its answer within the required 90 days. As in this case, the Department conceded that the answer had not been timely filed, but nonetheless argued that ' 40-2A-9(b) did not give the Administrative Law Judge authority to dismiss the final assessments in issue. The Department=s argument was rejected, as follows:
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> > >The cardinal rule of statutory construction is that a statute must be construed to fulfill the intent of the Legislature. Gulf Coast Media, Inc. v. The Mobile Press Register, Inc., 470 So.2d 1211. The purpose and object of the statute must be considered, and the plain language of the statute should not be followed when the practical consequences will lead to unjust results and is contrary to the purpose of the statute. Smith v. Alabama Medicaid Agency, 461 So.2d 817; Birmingham News Co. v. Patterson, 202 F.Supp 881. The plain-meaning rule of statutory construction should not be followed where the result is inconsistent with the intent of the statute. Bailey v. USX Corp., 850 F.2d 1506.

> The clear intent of the Taxpayers= Bill of Rights and Uniform Revenue Procedures Act, of which ' ' 40-2A-9(b) and (c) are a part, is to provide >equitable and uniform procedures for the operation of the department and for all taxpayers when dealing with the department.= See Code of Ala. 1975, ' 40-2A-2(1). Certainly the Legislature did not intent nor would it be equitable to penalize a taxpayer for failing to comply with a statute or regulation concerning administrative appeals, but not hold the Department to the same standard.
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> The Legislature required the Department to answer within 30 days to protect taxpayers from undue delay by the Department. However, if a taxpayer cannot be granted relief when the Department fails to answer within the required 30 days, or at least within the additional 60 days allowed by ' 40-2A-9(c), then in practical effect the time limits imposed by that section would be meaningless. The Department could ignore the time requirements without penalty.
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> In light of the above, ' 40-2A-9(b) must be construed to allow the administrative law judge authority to grant relief to either party where the opposing party fails to comply with a statute, regulation or preliminary order concerning an appeal before the Administrative Law Division, either by dismissing the taxpayer=s appeal if the taxpayer fails to comply, or by granting the relief sought by a taxpayer if the Department fails to comply. That legislative intent is recognized in Department Reg. 810-14-1-.24(3), which specifies that if either party fails to comply=...the Administrative Law Judge shall have discretion to dismiss the appeal, grant all or part of the relief sought by the taxpayer, or take any other action appropriate under the circumstances.=
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> The above logic is equally applicable in this case. If a taxpayer cannot be granted relief under ' 40-2A-9(b), then in practical effect the time limits imposed by ' 40-2A-9(c) would be meaningless. The Department could ignore the statutory time requirements without penalty. Clearly, that was not the intent of the Legislature. As noted in Bishop-Parker, numerous taxpayer appeals have been dismissed on motion by the Department because the taxpayer failed to timely file a notice of appeal. The intent of the Legislature and fairness requires that the Department must be held to the same standard.@
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> Sungard Business Systems, at 2-4.

This case is different from Sungard Business Systems and Bishop-Parker because the Department filed its AMotion for Production and Continuance@ within the required 90 days. However, the motion did not constitute an Answer, and the Preliminary Order entered on January 9, 1998 clearly notified the Department

that its Answer must be filed within the 90 day deadline.

The Department conscientiously pursued the case, and presented an excellent brief concerning the rural physician tax credit. If I had discretion to do so, I would not grant the Taxpayers summary relief under the facts of this case. However, to be consistent with Sungard Business Systems and Bishop-Parker, I must find that the Taxpayers are entitled to relief because the Department failed to file its Answer within the required 90 days.

The full 1995 refund requested by the Taxpayers should be issued by the Department. However, as explained in the analysis of Issue (1) above, the Taxpayers are not entitled to the credit in subsequent years.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, ' 40-2A-9(g).

Entered August 18, 1998.

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BILL THOMPSON
Chief Administrative Law Judge

BT:ks

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