

SHELDON D. & ADRIANNE D. VENNER§
125 ARROW WOOD LANE
GADSDEN, AL 35901-8611, §

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 16-852

Taxpayers, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

**FINAL ORDER ON TAXPAYERS'
APPLICATION FOR REHEARING**

This appeal involves final assessments of 2013, 2014, and 2015 Alabama income tax entered by the Revenue Department against the above Taxpayers. A Preliminary Order was entered directing the Taxpayers to review the Department's Answer and notify the Tax Tribunal by October 21, 2016 if they disagreed with the Department's position. The Order further stated that if the Taxpayers failed to respond by the above date, the final assessments would be affirmed. The Taxpayers failed to respond, and a Final Order affirming the assessments was entered on November 7, 2016.

The Taxpayers timely applied for a rehearing. A hearing was conducted on January 11, 2017. Sheldon Venner attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayers moved from their home in the Caribbean to the United States in 2005 pursuant to J-1 visas, which the federal government issues to allow international residents to study medicine in the United States. The visa requires the medical student to return to his or her own country to practice after becoming a doctor. That requirement can be waived, however, if the doctor agrees to serve or practice in an area in the United States that has a shortage of health care professionals.

The Taxpayers were granted a waiver and moved to Gadsden, Alabama in 2012 after Dr. Adrienne Venner completed her residency in New Jersey in 2012. The Taxpayers initially rented a house, but purchased a house in Gadsden in 2013, where they currently reside. Dr. Venner also began practicing medicine at Gadsden Regional Medical Center in Gadsden after moving in 2012. The City of Gadsden has a population of 36,856 according to the 2010 U.S. Census. Gadsden Regional Medical Center is a 365 bed facility.

Alabama law allows a rural physician income tax credit for any doctor that qualifies as a rural physician. Code of Ala. 1975, §40-13-132. A “rural physician” is defined as a physician “licensed to practice medicine in Alabama who practices and resides in a small or rural community and has admission privileges to a small or rural hospital.” Code of Ala. 1975, §40-18-131(1). A “small or rural community” is defined as “[a] community in Alabama that has less than 25,000 residents. . . .” Code of Ala. 1975, §40-18-132(2). A “small or rural hospital” is “an acute care hospital that . . . [c]ontains less than 105 beds. . . .” Code of Ala. 1975, §40-18-132(3).

The Taxpayers concede that Dr. Venner does not technically qualify for the §40-18-132 credit because Gadsden is not a small or rural community and the Medical Center where she practices is not a small or rural hospital, as those terms are defined by the credit statute. They argue, however, that Dr. Venner satisfied the intent of the credit provision. Specifically, they contend that the federal government granted the doctor a waiver of the requirement that she must return to her home country to practice because she agreed to treat patients in Gadsden and the surrounding towns and rural areas, which the federal government deems a medically underserved area. “The alien agrees to practice medicine

in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of healthcare professionals.” (T. 13).

I agree that the federal waiver program that allows a non-U.S. citizen doctor trained in the U.S. to stay and practice in the U.S. has a similar intent as Alabama’s rural physician tax credit at §40-18-132. That is, they both encourage physicians to live and practice in rural areas in Alabama that are in need of medical professionals.

But despite the similar intent of the federal and State provisions, the plain language of the Alabama credit statute must control. Where the language of a statute is clear, there is no room for a contrary statutory interpretation. *Ex parte Madison County, Alabama*, 406 So.2d 398 (1981). Consequently, because Dr. Venner does not qualify for the credit under the plain language of the statute, the credit was properly disallowed.

The November 7, 2016 Final Order is affirmed.

This Final Order on Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered January 24, 2017.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Gwendolyn B. Garner, Esq.
Sheldon D. Venner