ALABAMA TAX TRIBUNAL

THOMASINA ANDERSON SHARPE,	§	
Taxpayer,	§	DOCKET NO. INC. 17-452-JP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND FINAL ORDER

Thomasina Anderson Sharpe ("Taxpayer") timely filed her Alabama individual income tax returns for years 2013, 2014, and 2015. On each of those returns, she claimed Alabama's "rural physician" tax credit, pursuant to Ala. Code § 40-18-130, *et seq*. The Alabama Department of Revenue denied the credit for all three years, claiming that the Taxpayer did not meet the definition of "rural physician" in § 40-18-131(1). Consequently, the Department entered final assessments of tax, penalty, and interest for all three years. The Taxpayer appealed.

Alabama's Rural Physician Tax Credit

In May 1993, Governor Jim Folsom signed H.B. 165, which became applicable beginning with the 1994 tax year and which was designated as Act 1993-313. The Act stated that it was the legislature's intent "to institute programs that will make Alabama more competitive with other states in the recruitment and retention of physicians and reduce inequities that a small or rural hospital and small or rural communities have in the funding and recruitment of physician services." Act 1993-313, § 1.

To carry out its intent, the legislature provided that "a person qualifying as a rural physician shall be allowed a credit against the tax imposed by Section 40-18-2 [Alabama's

income tax], in the sum of $5,000." § 40-18-132. In addition to a few other limitations, the legislature stated that the "credit may be claimed for not more than five consecutive tax years." *Id.*

Article 4A of Title 40, Chapter 18, of the Code of Alabama, which contains the entirety of the credit provisions, is very short. In fact, Article 4A consists of only three sections. Section 130 contains the statement of legislative intent quoted previously. Section 131 contains definitions. And § 132 contains the credit provisions and limitations mentioned previously. It appears that none of the § 132 limitations are applicable here. Therefore, the question to be decided in this case is whether the Taxpayer qualifies as a "rural physician."

In § 40-18-131(1), the legislature defined a "rural physician" 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." That definition contains three requirements: the person must (1) be licensed to practice medicine in Alabama; (2) practice and reside in a "small or rural community;" and (3) have admission privileges to a "small or rural hospital." Obviously, all three requirements must be met for someone to qualify as a "rural physician" for purposes of the credit. And the phrases "small or rural community" and "small or rural hospital" each have their own definition.

In § 40-18-131(2), the phrase "small or rural community" is defined as "[a] community in Alabama that has less than 25,000 residents according to the latest decennial census and has a hospital with an emergency room." That definition contains two requirements: to be a "small or rural community" (which is one component of the "rural physician" definition), the community must (1) have less than 25,000 residents, and (2)

have a hospital with an emergency room. The phrase "small or rural hospital" is defined in § 40-18-131(3) as an acute-care hospital that either (1) has less than 105 beds and is located more than 20 miles from another Alabama acute-care hospital; or (2) receives Medicare rural reimbursement from the federal government.

Analysis

Here, the first and third requirements of the "rural physician" definition apparently are not contested by the Department. That is, it apparently is not contested that the Taxpayer is licensed to practice medicine in Alabama and that she has admission privileges to a small or rural hospital. Instead, the Department contends that the Taxpayer did not reside in a "small or rural community" because the town in which she lived (Saraland) did not have a hospital with an emergency room in it. The Department argues, consequently, that the Taxpayer did not qualify as a "rural physician" and thus was not entitled to the credit. Based on the express wording used by the legislature, and based on a fact stated by the Taxpayer, the Department is correct.

As noted, to qualify as a "rural physician" and thus qualify for the credit, the physician must "practice[ ] **and reside**[ ] in a small or rural community. . ." § 40-18-131(1) (emphasis added). More specifically, the physician must practice and reside in a community that not only has less than 25,000 residents, but also has in it a hospital with an emergency room. § 40-18-131(2). The Taxpayer stated to the Tribunal, however, that she resided in Saraland, which "does not have its own hospital or ER. . ." Although the Taxpayer **practiced** in a community that presumably had less than 25,000 residents and that had in it a hospital with an emergency room (Infirmary North Baldwin), the legislature

expressly stated that a physician must both "practice[ ] **and reside**[ ]" in such a community. Because the Taxpayer did not reside in such a community, as required by the legislature, the Taxpayer did not meet the statutory definition of a "rural physician" for purposes of the tax credit.

The Tribunal understands the Taxpayer's frustrations in this case. During the years at issue, she lived in a small town that had no hospital, so she drove to a nearby small town to treat patients where there was a hospital with an emergency room in it. To her, this was the essence of the rural physician tax credit. But, the credit was created by the legislature, and this Tribunal must follow the wording chosen by the legislative body. "Under settled principles of law, a court cannot substitute its judgment for that of the people's elected representatives." *State v. Alabama Municipal Ins. Corp., et al.*, 730 So.2d 107, 113 (Ala. 1998).

The Department's assessments must be affirmed, but the penalties assessed against the Taxpayer are waived for reasonable cause. It is unnecessary for the Tribunal to consider or rule on the Department's other arguments as to why the Taxpayer did not qualify for the credit.

The final assessments, less the penalties, are affirmed. Judgment is entered against the Taxpayer for 2013, 2014, and 2015 tax and interest of $5,488.79, $5,338.78, and $4,794.78, respectively. Additional interest is also due from the date the final assessments were entered on March 21, 2017.

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

Entered February 5, 2018.

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JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:dr
cc: Dr. Thomasina Sharpe
Ralph M. Clements, III, Esq.