ALABAMA TAX TRIBUNAL

BEATRICE M. ROSS,	§	
Taxpayer,	§	DOCKET NO. INC. 18-213-LP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

This appeal involves a final assessment of 2016 income tax. The parties requested the case be decided on the record without a hearing. Therefore, no hearing was conducted.

FACTS

The facts stated herein are based on the Stipulated Facts as filed jointly by the parties on August 15, 2018.

Beatrice M. Ross (the "Taxpayer") inherited certain Canadian real property (the "Canadian Property") from the estates of her parents in the 1990s. The Canadian Property was held by the Taxpayer in joint tenancy with three other individuals. The Canadian Property was farmed for several years in the production of canola. It was sold in 2016 to third-party buyers.

The Taxpayer reported the sale of her interest in the Canadian Property on her 2016 Canadian individual income tax return for a capital gain of C$132,731.[1] The Taxpayer also reported farming income of C$12,094 on her Canadian individual income tax return and paid Canadian federal tax of C$30,416 and provincial or territorial tax (Saskatchewan) of C$18,335.28. The Taxpayer paid the

[1] "C$" will be used to denote Canadian dollars; "US$" will denote U.S. dollars.

admitted tax liability on the Canadian return with her own money and has not requested its refund in whole or in part.

Throughout 2016, the Taxpayer was a resident of Alabama. The gain from the sale of the Taxpayer's interest in the Canadian Property and the farming income from the Canadian Property were subject to Alabama income tax. The Taxpayer timely filed her 2016 Alabama Individual Income Tax return as a full-year resident. The Taxpayer reported a gain from the sale of the Canadian Property and reported Canadian farming income for a total gain of US$192,000 plus Alabama-sourced income for an adjusted gross income of US$201,655.

The Alabama Individual Income tax return reported an Alabama Income Tax liability of US$9,752 but claimed a credit for taxes paid to Canada in the amount of US$9,752 for a balance due Alabama of $0. The return calculated a credit for taxes paid to Canada using Part J of Schedule OC which is titled "Credit for taxes paid to a foreign country."

The Department disallowed the credit claimed for taxes paid to Canada and entered an assessment for the deficiency.

ISSUE

The Department argues that the credit for taxes paid to Canada is due to be disallowed, while the Taxpayer argues that the credit is due to be upheld under Section 40-18-21 of the Code of Alabama, 1975.

ANALYSIS

The Taxpayer argues that Section 40-18-21 parts (a) and (c) both allow the Taxpayer a credit. It is the interpretation of the predecessor of this Tribunal that part (a) applies only where taxes were paid to a U.S. state (other than Alabama) or to a U.S. territory. *State of Alabama v. Carl & Claudine*

McGrew, Admin. Law Div. Docket No. Inc. 85-147. I agree that part (a) does not apply where taxes are paid to a foreign country. The term used in part (a) is "territory." However, the Legislature used the term "foreign country" in part (c). "Where Congress knows how to say something but chooses not to, its silence is controlling." *Limestone County Water & Sewer Authority v. State of Alabama Department of Revenue*, Alabama Tax Tribunal, Docket No. 17-280-JP, quoting *In re Haas*, 48 F.3d 1153, 1156 (11th Cir. 1995), on remand 195 B.R. 933, rev'd on other grounds, 162 F.3d 1087 (11th Cir. 1998). "In interpreting a statute, it is the court's duty to ascertain and give effect to the legislative intent as expressed in the words of the statute." *Kimberly-Clark Corporation v. Eagerton*, 445 So.2d 566 (Ala.Civ.App.1983); *Winstead v. State*, 375 So.2d 1207 (Ala.Civ.App.), cert. denied, 375 So.2d 1209 (Ala.1979). The Legislature chose not to include the term "foreign country" in part (a). Thus, there is no allowance of a credit for taxes paid to a foreign country under part (a). Therefore, we turn to part (c).

Section 40-18-21(c)(1) of the Code of Alabama, 1975, provides the Taxpayer with the claimed credit. That statute reads:

> A resident individual taxpayer, who is either a partner or member of a Subchapter K entity, a shareholder of an Alabama S corporation, or a beneficiary of an estate or trust, during all or part of a year, shall be allowed a credit equal to fifty percent (50%) of his or her proportionate share of the income taxes paid or accrued, including a payment recognized by 26 U.S.C. § 901, to a foreign country with respect to the trade or business or investment income of such business, including related operations and affiliates.

There are two arguments that the Department raises in opposition to the application of part (c):

1. The Department argues that the Taxpayer is not a "partner or member of a

Subchapter K entity, a shareholder of an Alabama S corporation, or a beneficiary of an estate or trust" under the statute.

2. The Department argues that the foreign tax was not "actually paid by the entity."

These arguments will be addressed in turn.

First, the Taxpayer must be either (i) a partner or member of a Subchapter K entity, (ii) a shareholder of an Alabama S corporation, or (iii) a beneficiary of an estate or trust. The Taxpayer argues that she is either (i) or (iii). It is undisputed that she initially inherited the Canadian Property from her parents' estates in the 1990s and thereafter owned the Canadian Property with three other individuals in joint tenancy. The Taxpayer claims this joint tenancy would be considered a partnership as defined by the IRS if she is not considered a beneficiary.

While the Taxpayer acquired the Canadian Property as a beneficiary of her parents' estate, she was no longer a beneficiary in 2016 with regards to the Canadian Property. A Certificate of Title provided to this Tribunal shows that ownership was transferred to the Taxpayer, individually, in fee simple on November 19, 1993. The decedent's estate no longer owns the Canadian Property. The Taxpayer did not receive income from the farming activity and sale of property in 2016 as a beneficiary of the estate.

We next examine whether the Taxpayer is a partner in a subchapter K entity under the statute. Section 40-18-1(35) of the Alabama Code, 1975, defines a Subchapter K entity as "[a] partnership, including a limited partnership or limited liability partnership, limited liability company, or any other entity subject to subchapter K of the Internal Revenue Code, 26 U.S.C. §§701 to 761, for federal income tax purposes, not including a single member limited liability company."

26 U.S.C. § 761(a) defines "partnership" to include "a syndicate, group, pool, joint venture, or

other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate."

Based on the facts presented, I find that the activity of the Taxpayer in owning the Canadian Property with three other individuals as a working farm from which she earned income does meet the definition of a partnership.[2]

The second argument of the Department is that because the tax paid to Canada was not *paid by* the Subchapter K entity, Alabama S Corporation, or estate or trust (but was paid by the Taxpayer individually), then the Taxpayer does not qualify for the credit. The Department states that part (a) and part (c) should be read together to "avoid absurdity." (Department's Brief of the Issues, FN 4.) And that because parts (a) and (c) should be read together, the quote in part (a) which states that the income tax must be "actually paid by the entity to any state or territory" also requires the income tax in part (c) to be actually paid by the entity to the foreign country. If read together with part (a), it follows that part (c) would be a subset of the credit allowed in part (a), meaning that payments of tax to foreign countries fall under the umbrella of payments of tax to "any state or territory…outside the State of Alabama." Code of Alabama, 1975, §40-18-21(a). That has already been determined not to be the case. Additionally, part (b) has nothing to do with part (a) or (c). The only similarity is the allowance of a tax credit. Part (b) does not concern a credit for taxes paid to another jurisdiction; it is a credit for a job development fee, furthering the position that parts (a), (b), and (c) should be read independently of each other.

[2] A foreign partnership is considered a partnership under IRC §761(a). See IRC §6031(e) excepting foreign partnerships from filing requirements of all partnerships.

When looking at part (c) independently, we see that the requirements regarding foreign taxes are unambiguously described: the income tax must be "paid or accrued…with respect to the trade or business or investment income of such business." The difference between the verbiage "actually paid by the entity" in part (a) and "with respect to the trade or business or investment income" in part (c) should not be ignored. The plain language of the statute must be followed. *Ex parte Madison County, Alabama*, 406 So.2d 398 (1981). Additionally, the Legislature included an option in part (c) that the tax must be either paid *or accrued*. Not only is there no requirement that that tax be paid *by the entity* to the foreign jurisdiction, there is no requirement that that tax be paid at all as long as it was accrued.

Part (c) is not a subpart of part (a). It stands on its own within the statute. The Legislature could have added the language requiring the entity to pay the tax in part (c), but it did not.

CONCLUSION

The Taxpayer qualified for the credit allowed under Section 40-18-21(c), and the Final Assessment is voided. Judgment is entered for the Taxpayer.

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

Entered April 25, 2018.

/s/ Leslie H. Pitman
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lp:dr
cc: John E. Cabral, Esq.
David E. Avery, III, Esq.