

ALABAMA TAX TRIBUNAL

CARL D. & SARA M. SKINNER,	§	
Taxpayers,	§	DOCKET NO. INC. 19-738-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND FINAL ORDER

Carl D. and Sara M. Skinner (Taxpayers) timely filed their 2017 Alabama individual income tax return, on which they requested a refund. The refund request was generated by a \$3000 tax credit that they claimed pursuant to Act 2011-551, which is known as the “Full Employment Act of 2011.” The Alabama Department of Revenue disallowed the credit, and the Taxpayers appealed the refund denial to the Alabama Tax Tribunal.

Question Presented

The Full Employment Act of 2011 created an income tax and financial institution excise tax credit “for small businesses that create new jobs paying more than ten dollars ... per hour.” For purposes of the credit, “a small business is defined as a business that employs 50 or fewer employees on the effective date of this act.” The Act, which was signed into law by Governor Robert Bentley on June 9, 2011, stated that it would become effective for tax years beginning on or after January 1, 2011.

Here, the business for which the Taxpayers claimed the credit was founded by Mr. Skinner in 2015. Therefore, the question is whether the Taxpayers’ business, which was non-existent on the effective date of the Act, could employ any employees on that date.

Law and Analysis

In the Full Employment Act of 2011, the Alabama legislature stated the following, in part:

...

Section 2. For purposes of this act, a small business is defined as a business that employs 50 or fewer employees on the effective date of this act.

Section 3. The Legislature finds and determines, in accordance with its goal, shared by Governor Robert Bentley, of achieving statistical full employment for Alabama's citizens, that the Legislature intends to foster an optimal environment for job growth throughout the state.

Section 4. (a) An Alabama income and financial institution excise tax credit is hereby established for small businesses that create new jobs paying more than ten dollars (\$10) per hour. ... (e) The income tax credit provided in this section may be claimed only for employees who are hired following the date this act is signed by the Governor or is otherwise formally enacted.

...

Act 2011-551. The Act is codified in Ala. Code §§ 40-18-290, et seq.

There have been no administrative rules adopted by the Revenue Department concerning the credit. And the Tax Tribunal is not aware of there being any reported cases concerning the credit.

Here, Mr. Skinner founded Tech Releaf, Inc., doing business as Protec Recycling, in 2015 with no employees. At the time of the filing of this appeal, the Taxpayers stated that the business had created 8 new jobs in Alabama. It is this business – Protec Recycling – for which the Taxpayers claimed the small-business credit on their 2017 return.

Obviously, Protec Recycling did not exist on the effective date of Act 2011-551. That point was relied upon by the Revenue Department in disallowing the credit:

For the purposes of this tax credit, a small business is defined as a business that employs 50 or fewer employees on the effective date of this act. § 40-18-291, Code of Alabama 1975. The Act was signed June 9, 2011 and is effective for the tax years beginning on or after January 1, 2011. Thus, to qualify for this credit, you had to have had an existing small business in 2011. Since Protec Recycling was not in existence in 2011, the Full Employment Credit claimed on your return has been disallowed.

The Taxpayers disagreed, however, and stated the following in their Notice of Appeal:

Section 2 of the Full Employment Act of 2011 ... doesn't contain the word 'existing' to define an eligible small business. The ALDOR is wrongly inserting the word "existing;" which too narrowly defines an eligible small business. Furthermore, the Full Employment Act of 2011 doesn't specifically state that newly created start-up businesses are ineligible. No specific language in the law excludes new business or appears to intend to make the law apply only to a business that existed on 1/1/2011. The intent of the law is to limit eligible businesses to those with fewer than 50 employees Not limit it to existing businesses. If this were the intent then the law would state not applicable to business[es] that start after the effective date of this act.

In its Answer to the Taxpayers' Notice of Appeal, the Revenue Department argued:

A business that does not exist does not have employees, and is incapable of employing "50 or fewer" employees on the effective date of the Full Employment Act. The language of the Act presupposes that eligible businesses will be those in existence at the time the Act became effective, and it is those businesses the statute intended to spur to hire additional employees. Because the Taxpayers' business did not exist at any time during 2011, nor during any tax year beginning on or after January 1, 2011, it was incapable of having employees, hiring additional employees, or qualifying for the credit.

In their post-hearing briefs, the parties maintained their respective positions, with the Taxpayers reasserting that "the Full Employment Act of 2011 does not state that newly created start-up businesses are ineligible. No language in the law excludes new business or appears to intend to make the law apply only to a business that existed on 1/1/2011."

The Revenue Department countered, as follows:

The language in question states “a small business [that is, one that could potentially qualify for the credit] is defined as a business that employs 50 or fewer employees on the effective date of this act.” CODE OF ALA. (1975), § 40-18-291. The Department draws the Tribunal’s attention to the operative verb in that sentence, “employ.” Merriam-Webster defines the word “employ” to have several closely related meanings, among them “to make use of (someone or something inactive),” “to use (something, such as time) advantageously,” “to use or engage the services of,” “to provide with a job that pays wages or a salary,” and “to devote to or direct toward a particular activity or person.” (<https://www.merriam-webster.com/dictionary/employ>, last visited Dec. 27, 2019). Given the context, the Department argues that the meaning of the word in this case is “to provide with a job that pays wages or a salary.” The Department further draws the Tribunal’s attention to the tense of the verb “employ” used in the statute. The verb is clearly in the present tense. The phrase “on the effective date of this act” is a limiting phrase, further defining the verb “employs,” such that the word means that a prospective claimant of the credit must, presently, on June 9, 2011, provide a job that pays wages or a salary. The Taxpayer’s business did not exist on June 9, 2011. Therefore, it did not, on that date, provide a job that paid wages or a salary. Zero is a number, and the Taxpayer’s business was incapable of employing any number of employees on that date, including zero employees, because it did not exist and could not take any present action at all on that date. The Department therefore argues that the language of the statute is clear, and the clear mandate of the language chosen by the Legislature indicates that it intended to benefit only those businesses capable of presently “employing” some number of employees on the date the Act was passed, which would necessarily exclude not-yet existing businesses from the credit’s ambit.

Because the facts are undisputed, this case is to be decided on the basis of statutory interpretation. And, as noted by the Revenue Department, “[t]he cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature as manifested in the language of the statute. *Gholston v. State*, 620 So.2d 719 (Ala. 1993). Absent a clearly expressed legislative intent to the contrary, the language of the statute is conclusive. Words must be given their natural, ordinary, commonly understood meaning, and where plain language is used, the court is bound to interpret that language to mean exactly what it says. *IMED Corp. v. Systems Engineering Associates Corp.*, 602 So.2d 344 (Ala. 1992).” *Greenetrack, Inc. v. State of Alabama Dep’t of Rev.*, Alabama Tax Tribunal,

No. S. 11-422-JP (Opinion and Final Order dated August 29, 2019, p. 6, quoting *Ex parte State Dep't of Rev.*, 683 So.2d 980, 983 (Ala. 1996)).

The 2011 Act established a tax credit for small businesses that met certain criteria. In Section 2, the legislature expressly defined a “small business” as one that “employs 50 or fewer employees on the effective date of this act.” The legislature used the word “employs” in direct relation to a specific date; *i.e.*, the effective date of the Act. Thus, a business must have employed 50 or fewer employees on the date that Act 2011-551 became effective to be considered a “small business” and, therefore, to be eligible for the credit.

Black's Law Dictionary, Fifth Edition, defines “employ” as “to engage in one’s service; to hire; to use as an agent or substitute in transacting business; to commission and intrust with the performance of certain acts or functions or with the management of one’s affairs ...” The Act became effective in 2011, but Protec Recycling did not come into existence until 2015. Consequently, prior to 2015, Protec Recycling could not have engaged anyone in its service or hired anyone or used anyone as an agent to transact its business. In fact, in 2011, Protec Recycling was not a business at all. Instead, it was non-existent.

Alabama’s legislature chose to create a tax credit for businesses that met certain criteria on a specific date. The Taxpayers’ business, which did not come into existence until after that date, did not qualify for the credit because it could not and did not employ the requisite number of employees on that date. In other words, on the effective date of the Act, the Taxpayers’ business could not engage in the act of employing anyone and, thus, did

not fulfill the express wording of the Act.

Therefore, the Revenue Department's disallowance of the tax credit and the resulting denial of the Taxpayers' refund request are upheld.

It is so ordered.

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

Entered July 8, 2021.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

cc: L. Scott Barringer, CPA
Ralph M. Clements, III, Esq.