

ALABAMA TAX TRIBUNAL

SUSAN A. HUNT & KEVIN W. §
HENDERSON, §
Taxpayers, § DOCKET NO. INC. 18-985-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

OPINION AND FINAL ORDER

This appeal involves Alabama’s Rural Physician Tax Credit in Ala. Code § 40-18-130, *et seq.* Susan A. Hunt and Dr. Kevin W. Henderson (Taxpayers) claimed the credit on their Alabama individual income tax returns for years 2015, 2016, and 2017. After review, the Alabama Department of Revenue denied the credit for all three years, entering final assessments of income tax against the Taxpayers for years 2015 and 2016 and reducing the Taxpayers’ requested refund for 2017.

Question Presented

Generally, Alabama’s legislature allows an income tax credit for a licensed Alabama physician who practices medicine and resides in an Alabama community that has less than 25,000 residents and a hospital with an emergency room. The physician also must have admission privileges to a “small or rural hospital.” It is undisputed that Dr. Henderson is an Alabama-licensed physician who meets the requirements regarding the location of his practice and regarding admission privileges. The question presented, however, is whether the Taxpayers resided in a community that had a hospital with an emergency room.

Law

The credit was enacted in Act 1993-313, which was codified at Ala. Code § 40-18-130, *et seq.* The credit reads as follows in its entirety:

Legislative intent.

It is the intent of the Legislature 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.

Ala. Code § 40-18-130.

Definitions.

For the purposes of this article, the following words have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) RURAL PHYSICIAN. 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.

(2) SMALL OR RURAL COMMUNITY. 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.

(3) SMALL OR RURAL HOSPITAL. An acute care hospital that meets one of the following requirements:

a. Contains less than 105 beds and is located more than 20 miles, under normal travel conditions, from another acute care hospital located in Alabama.

b. Receives Medicare rural reimbursement from the federal government.

Ala. Code § 40-18-131.

Physicians qualifying for credit; time limit; promulgation of rules.

Beginning with the 1994 tax year, a person qualifying as a rural physician shall be allowed a credit against the tax imposed by Section 40-18-2, in the sum of \$5,000. No credit shall be allowed to a rural physician who is, on May 4, 1993, practicing in a small or rural community. No credit shall be allowed to a physician who has previously practiced in a small or rural community unless, after May 4, 1993, that physician returns to practice in a small or rural community after having practiced in a large or urban community for at least three years. The tax credit may be claimed for not more than five consecutive tax years. The Department of Revenue shall promulgate any rules and regulations necessary to implement and administer the provisions of this article.

Ala. Code § 40-18-132.

There have been no Alabama appellate cases involving the Rural Physician Tax Credit. And the Revenue Department has not adopted any rules concerning the credit.

Facts

As noted, the Taxpayers claimed the credit on their returns for years 2015, 2016, and 2017. In appealing to the Tax Tribunal from the Revenue Department's denial of the credit, the Taxpayers stated that they lived in Jackson's Gap, Alabama, during the years in question and that Dr. Henderson practiced medicine at Russell Medical Center (which is in Alexander City, Alabama) during those years. Concerning their residence, they asserted that they resided full time in the same community as Russell Medical Center; that Jackson's Gap is directly adjacent to Alexander City, being only 3.1 miles from the Alexander City limits; and that the Alexander City community includes Jackson's Gap. Thus, the Taxpayers contend that they qualified for the credit.

In the Revenue Department's Answer to the Taxpayers' appeal, it acknowledged

that the definition of the term “community,” as used in the statute, was being litigated before the Tax Tribunal in *Dean v. State of Alabama*, Docket No. Inc. 18-569-JP. Therefore, the Revenue Department requested that the present appeal be held in abeyance until *Dean* was decided.

Once an Opinion and Final Order was entered in *Dean*, the Revenue Department conceded in the present appeal that Alexander City qualified as a “small or rural community” for purposes of the credit. However, the Revenue Department argued that the Taxpayers here did not qualify for the credit because their place of residence – Jackson’s Gap – did not have within it a hospital that had an emergency room.

In the Taxpayers’ response, they restated that they lived in Jackson’s Gap, “which is in an unincorporated area in Tallapoosa County a couple of miles from the Alexander City limits.” And they reiterated that they lived “in the community that includes Russell Medical in Alexander City, Alabama where [Dr. Henderson] worked.”

The Tax Tribunal then directed the Taxpayers to respond to the Revenue Department’s argument that the Taxpayers did not qualify for the credit because they resided in a place that had no emergency room. The Taxpayers stated: “The [Revenue] Department incorrectly stated in its response that we reside in the town of Jackson’s Gap, Alabama. Our residence is in unincorporated Tallapoosa County. Our mail is delivered by the U.S. Postal Service in Jackson’s Gap, Alabama. We do not reside within the town limits of Jackson’s Gap.” The Taxpayers quoted from *Dean* and maintained their position that they “live within the area of Alexander City” and that

they “are residents of the Alexander City rural community. ... We live within an area of less than 25,000 residents whether unincorporated or not that has a hospital with an emergency room.”

In response to the Tax Tribunal’s Fifth Preliminary Order, the Revenue Department stated the following, in part:

The Taxpayers err in assuming that the location of their home in Jackson’s Gap was the reason for the Department’s continued objection to their qualification for the credit. Rather, the Department’s objection is rooted in the fact that, wherever their home may be, it is not in Alexander City, which is the only geographical unit under discussion that has, as the statute requires, a hospital with an emergency room. Jackson’s Gap does not have a hospital with an emergency room, obviously. But neither does unincorporated Tallapoosa County.

Then, in May 2021, the Taxpayers replied in part, as follows, to the Revenue Department’s response:

The Tax Tribunal has chosen to broadly define a small or rural community as an ‘incorporated place AND an area’ as defined in the Dean Case. ... That is why the Tax Tribunal chose to more broadly define a small or rural community in the Dean case as an incorporated place AND an area with the determination made on the basis of a singular geographical unit. ... This specifically addresses the point that determinations must be made on the basis of a singular geographical unit with information drawn from the latest decennial census. This reaffirms the fact that we are a part of the same rural community that Russell Hospital serves.

Analysis

In *Dean*, the Tax Tribunal stated:

Thus, for purposes of Alabama’s tax credit, the phrase “small or rural community” means an “incorporated place” and an “area,” as those terms are described in 15 C.F.R. § 50.40(b) and (c), with two exceptions. First, the population number chosen by our legislature controls, instead of the population number used in the Census Bureau’s rule. Second, the incorporated place or the area must have within it a hospital with an

emergency room. Therefore, an Alabama physician who resides in an incorporated place such as a city or village that has less than 25,000 residents according to the latest decennial census and that has a hospital with an emergency room, or who resides in an area, whether incorporated or not, that has less than 25,000 residents according to the latest decennial census and that has a hospital with an emergency room, is residing in a “small or rural community.” Because Alabama law does not allow the aggregating of populations, *see Woods, supra*, these determinations must be made on the basis of a singular geographical unit.

Dean, Opinion and Final Order, January 29, 2020, pp. 11-12.

Here, the Taxpayers seem to read *Dean* as combining an “incorporated place” and an “area” into a “singular geographical unit.” But *Dean* states just the opposite, as quoted. Again, “an Alabama physician who resides in an incorporated place ... that has a hospital with an emergency room, or who resides in an area, whether incorporated or not, that ... has a hospital with an emergency room, is residing in a ‘small or rural community.’ Because Alabama law does not allow the aggregating of populations, *see Woods, supra*, these determinations must be made on the basis of a singular geographical unit.” *Dean*, pp. 11-12.

Therefore, the Taxpayers cannot claim Alexander City, with its emergency room, as their residential community for purposes of the Rural Physician Tax Credit. As noted by the Revenue Department, the Taxpayers did not reside in Alexander City, “which is the only geographical unit under discussion that has, as the statute requires, a hospital with an emergency room. Jackson’s Gap does not have a hospital with an emergency room, obviously. But neither does unincorporated Tallapoosa County.”

Conclusion

The Revenue Department's decision to disallow the Rural Physician Tax Credit to the Taxpayers is upheld. Thus, the final assessments for years 2015 and 2016 are affirmed, but the penalties in those assessments are waived for reasonable cause. The Revenue Department's reduction of the Taxpayers' refund for year 2017 also is affirmed.

For 2015, judgment is entered against the Taxpayers and in favor of the Revenue Department in the amount of \$3,950.67, plus additional interest that continues to accrue until the liability is paid in full. For 2016, judgment is entered against the Taxpayers and in favor of the Revenue Department in the amount of \$5,298.36, plus additional interest that continues to accrue until the liability is paid in full.

It is so ordered.

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

Entered August 9, 2021.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

cc: Susan A. Hunt & Dr. Kevin W. Henderson
Ralph M. Clements, III, Esq. (w/enc.)