

FARAZ & AMBRIN F. MASOOD
961 PARKLANE ROAD
AUBURN, AL 36830-7517,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,
v.

DOCKET NO. INC. 05-845

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department denied a refund of 2004 income tax requested by Faraz and Ambrin F. Masood ("Taxpayers"). Faraz Masood ("Taxpayer") appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on October 26, 2005. The Taxpayer attended the hearing. Assistant Counsel Margaret McNeill represented the Department.

The issue in this case is whether the Taxpayer qualified for the \$5,000 rural physician tax credit in 2004. Code of Ala. 1975, §40-18-130, et seq.

The Taxpayer is a psychiatrist. He lived and practiced in Enterprise, Alabama until July 2003. He moved to Auburn, Alabama at that time and began practicing at the VA hospital in Tuskegee, Alabama. The Taxpayers claimed the \$5,000 rural physician tax credit on their 2004 Alabama income tax return. The Department disallowed the credit because (1) the Tuskegee hospital facility has more than 105 beds, and (2) the Taxpayer did not reside in a small rural community in 2004. The Department consequently disallowed the refund claimed by the Taxpayers on their 2004 return.

The rural physician tax credit was in issue in a prior appeal before the Administrative Law Division, *Mallah v. State of Alabama, Inc.* 00-728 (Admin. Law Div. 2/15/01). In that case, the taxpayer, a doctor, worked at a hospital in Sylacauga, Alabama, but resided with

his family in Hoover, Alabama. The Administrative Law Division affirmed the Department's denial of the credit because the taxpayer did not reside in a small rural community, as required by §40-18-131(1). The Final Order in *Mallah* reads in pertinent part:

Any doctor that qualifies as a rural physician is allowed a \$5,000 tax credit against his Alabama income tax. Section 40-18-132. The credit may not be claimed for more than five consecutive years.

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." Section 40-18-131(1). The Department does not contest that Sylacauga qualifies as a small or rural community (a community with less than 5,000 residents that has a hospital with an emergency room), or that the Taxpayer had admission privileges at a small or rural hospital (a hospital with less than 105 beds, and located more than 20 miles from another acute care hospital). The Department contends, however, that the Taxpayer does not qualify for the credit because he did not reside in Sylacauga during the subject years. I agree.

As indicated, to qualify for the credit, a physician must both practice and reside in a small or rural community. Section 40-18-131(1). "Residence" is not statutorily defined in the Alabama tax code, Title 40, Code 1975. "'Residence,' in contrast with domicile, is not a word of fixed legal definition but must be interpreted according to the context and the purpose of the statute in which it is found." *Flather v. Norberg*, 377 A.2d 225, 228 (R.I. 1977). The term is defined in the *American Heritage Dictionary*, 2nd College Ed., at 1051, as "a place which one lives; a dwelling."

The Taxpayer resided with his family at his home in Hoover, Alabama during the subject years, not in Sylacauga. Renting an apartment in Sylacauga and staying at the apartment one or two nights a week did not establish Sylacauga as the Taxpayer's residence. Consequently, because the Taxpayer did not reside in Sylacauga during the subject years, he is not entitled to the rural physician tax credit. The above conclusion is supported by the rule of statutory construction that a credit statute must be strictly construed against the taxpayer and for the Department. *Brundidge Milling Co. v. State*, 228 So.2d 475 (1969).

Mallah at 2 – 3.

There is some dispute in this case as to whether the Tuskegee hospital at which the Taxpayer practiced in 2004 had more or less than 105 beds. That issue is moot, however, because, as in *Mallah*, the Taxpayer did not reside in a small rural community in 2004. Rather, he resided in Auburn, which is not a small rural community. Consequently, the Department correctly denied the Taxpayer the credit in that year.¹ The Department's denial of the refund in issue is affirmed.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered December 13, 2005.

BILL THOMPSON
Chief Administrative Law Judge

¹ The Taxpayer also claimed the credit in 2003. The Department has also preliminarily disallowed that credit. However, the Taxpayer resided and worked in Enterprise, Alabama until July 2003, and thus may qualify for a partial credit in that year, assuming that Enterprise is a small rural community and the hospital at which the Taxpayer worked in Enterprise had less than 105 beds.