

FARAZ & AMBRIN F. MASOOD
961 PARK LANE ROAD
AUBURN, AL 36830,

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 06-469

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Faraz and Ambrin Masood (together “Taxpayers”) for 2003 income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on November 29, 2006. Faraz Masood (individually “Taxpayer”) attended the hearing. Assistant Counsel J.R. Gaines represented the Department.

The issue in this case is whether the Taxpayer qualified for the \$5,000 rural physician tax credit in 2003. As discussed below, the credit applies if a physician resides in a small or rural community in Alabama and has admission privileges at a small or rural hospital in Alabama. Code of Ala. 1975, §40-18-130, et seq.

The Taxpayer is a psychiatrist. Before July 2003, the Taxpayer resided in Enterprise, Alabama and practiced at four clinics operated by the South Central Alabama Mental Health Board, Inc. The clinics were located in Andalusia, Luverne, Greenville, and Enterprise, Alabama. Those cities had a population of less than 25,000 during 2003. The Taxpayer and his family moved to Auburn, Alabama in July 2003. He began practicing at the VA Hospital in Tuskegee, Alabama at that time.

The Taxpayer claimed the \$5,000 rural physician tax credit on his joint 2003 Alabama return. The Department disallowed the credit, which resulted in additional tax

due. The Department assessed the Taxpayer accordingly.¹

The Alabama Legislature enacted the rural physician tax credit in 1993 as an incentive for doctors to practice at small, rural hospitals in Alabama. The credit applies if the doctor qualifies as a “rural physician,” which is defined at Code of Ala. 1975, §40-18-131(1), as follows:

- (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.

The Taxpayer also claimed the credit on his joint 2004 Alabama return. The Department disallowed the credit, which resulted in a denied refund for the year. The Taxpayer appealed to the Administrative Law Division. The Administrative Law Division held that the Taxpayer did not qualify for the credit in 2004 because he resided in Auburn in that year. Auburn is not a small or rural community, as required by the statute. *Masood v. State of Alabama*, Inc. 05-845 (Admin. Law. Div. 12/13/05). The Administrative Law Division also stated in the earlier appeal that the Taxpayer may be entitled to a partial credit for 2003 because he lived in Enterprise until July 2003. *Masood* at 3.

The Taxpayer claims in this case that he is entitled to a partial credit for 2003 because until mid-July 2003, he resided in a small or rural community, i.e., Enterprise, and also practiced at a small or rural hospital, i.e., the four clinics listed above.

¹ The original amount determined by the Department to be due on June 16, 2005 was \$5,314.24. In April 2006, the Department applied the Taxpayers' 2005 refund of \$855 to the 2003 liability, which reduced the amount due to \$4,553.22. The Department subsequently entered the final assessment in issue for \$4,593.39 on May 16, 2006. (Note: Interest continued to accrue on the liability. Consequently, the reduced amount due after the 2005 refund was applied was more than the original amount due less the amount paid. Likewise, the final assessment is also for slightly more than the reduced amount due after the 2005 refund was applied.)

I agree that the Taxpayer resided in a small or rural community until July 2003 for purposes of the credit.² Unfortunately for the Taxpayer, he did not have admission privileges to a small or rural hospital, as required to be a rural physician. See, §40-18-131(1).

First, the four clinics at which the Taxpayer worked before July 2003 were outpatient only. Consequently, the Taxpayer could not have had admission privileges to the clinics, as required by the statute.

Second, there is no evidence the clinics were “acute care hospital(s),” as required to be small or rural hospitals. See, §40-18-131(3). “Acute care hospital” is not defined by the statute, but it is presumed that an acute care hospital is one with an emergency room. There is no evidence the outpatient clinics had emergency rooms.

The Taxpayer articulately argued at the November 29 hearing that there is no policy reason why a physician that lives in a rural community and practices at an outpatient clinic in the rural community should not also be allowed the credit. I cannot disagree. But to be allowed the credit, the statutory requirements must be strictly satisfied. They were not in this case.

The 2003 final assessment is affirmed. Judgment is entered against the Taxpayers for 2003 tax and interest of \$4,593.39. Additional interest is also due from the date the final assessment was entered, May 16, 2006.

² This finding assumes that Enterprise has a hospital with an emergency room, as required to be a “small or rural community,” as defined at §40-18-131(2).

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

Entered December 5, 2006.

BILL THOMPSON
Chief Administrative Law Judge

bt:ks

cc: Cleophus Gaines, Jr., Esq.
Faraz Masood, M.D.
Kim Peterson