

## ALABAMA TAX TRIBUNAL

PHILLIP & JENNIFER L. DEAN,	§	
Taxpayers,	§	DOCKET NO. INC. 18-569-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

### OPINION AND FINAL ORDER

On their 2017 Alabama individual income tax return, Phillip and Jennifer Dean (“Taxpayers”) claimed Alabama’s rural physician tax credit. The Alabama Department of Revenue denied the credit, which reduced the amount of refund that the Taxpayers had requested. The Taxpayers timely appealed that denial to the Alabama Tax Tribunal.

#### Question Presented

In 1993, Alabama’s legislature created an income tax credit for a “rural physician.” In part, that phrase was defined as a physician “who practices and resides in a small or rural community. . .” In this appeal, the Tax Tribunal is called upon to determine the meaning of the phrase “small or rural community.”

#### Law

In creating the credit, the legislature stated the following:

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.

Act 1993-313, § 1; codified at Ala. Code § 40-18-130.

Then, in Section 3 of the Act, the legislature authorized the credit:

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.

The only other section in the Act contained three definitions, 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.

(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.

Act 1993-313, § 2; codified at Ala. Code § 40-18-131.

There have been no Alabama appellate cases involving the rural physician tax credit. And the Revenue Department has adopted no rules on the subject.

### Facts

As stated, the Taxpayers claimed the rural physician tax credit on their 2017 return. That credit, along with other items on the return, generated a refund request.

By letter dated April 2, 2018, the Revenue Department notified the Taxpayers that it had disallowed the credit for the following two reasons:

Since you are not a physician, the rural physician tax credit claimed on your return has been disallowed.

Tuscumbia is included in the Florence-Muscle Shoals Metropolitan Area; this area is not considered a rural community. Thus, the rural physician credit as claimed on your return has been disallowed.

The letter then informed the Taxpayers of the reduced amount of their refund.

Dr. Dean responded by letter, stating first that he was licensed to practice medicine in Alabama and had been so licensed since the beginning of 2011. He continued by discussing the remaining requirements of the credit:

Second, I both practice and reside in a "small or rural community", which is statutorily defined as "[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." Although our home has a Tuscumbia mailing address, our residence is located within the city limits of Muscle Shoals in Colbert County, Alabama. Per the 2010 U.S. Census, the City of Muscle Shoals had a total population of 13,146, well below the 25,000-resident threshold. Muscle Shoals is served by Shoals Hospital, which has an emergency room. I currently practice in both Sheffield in Colbert County, Alabama, and in Russellville in Franklin County, Alabama. The 2010 U.S. Census lists total populations for those cities at 9,039 and 9,830, respectively. Further, Sheffield is served by Helen Keller Hospital, and Russellville is served by Russellville Hospital, both of which have emergency rooms. As these facts clearly show, I both reside and practice in a "small or rural community."

Although the Notice Letter predicated the disallowance in part on my residence being included in the Florence-Muscle Shoals Metropolitan Area, the statute makes no reference to the use of aggregated populations of metropolitan statistical areas. Indeed, in the final order entered in Woods v. State of Alabama Department of Revenue, Docket No. INC. 16-1079 on April 18, 2017, the Chief Tax Tribunal Judge noted:

A metropolitan statistical area is a creation of the federal government, and is a specific geographical region with a relatively high population density at its core and close economic ties throughout the area. The designation is used by

the U.S. Census Bureau and other federal agencies for statistical purposes. ***It is not, however, relevant for purposes of determining if an Alabama resident physician is entitled to the § 40-18-132 tax credit.*** Rather, the specific language of the statute must control.

(emphasis added). Accordingly, the population of the Florence-Muscle Shoals Metropolitan Area is not the proper reference in this circumstance.

Finally, to qualify for the credit, a rural physician must have admission privileges to a "small or rural hospital," which is defined in Ala. Code § 40-18-131 as an acute care hospital that either (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 or (b) receives Medicare rural reimbursement from the federal government. Russellville Hospital in Russellville, Franklin County, Alabama, is an acute care hospital that receives Medicare rural reimbursement from the federal government. I have admission privileges at Russellville Hospital and so meet the third requirement for the tax credit.

The Revenue Department replied to Dr. Dean's letter, as follows:

Upon review, the Department has determined that the adjustment notice dated April 2, 2018, is in error. The letter inadvertently stated that the credit was disallowed because you are not a physician; the Department does not contest the fact that you are a physician.

The reason for the denial was because your residence is included in the Florence-Muscle Shoals Metropolitan Area. The final order entered in the Woods v. State of Alabama Department of Revenue case does indicate that a metropolitan statistical area is not relevant in determining whether a physician is entitled to the rural physician tax credit.

In the final order entered in Sharpe v. State of Alabama Department of Revenue, Docket No. INC. 17-452-JP on February 5, 2018, Alabama Tax Tribunal Chief Judge Patterson dissects each requirement of the code sections applicable to the rural physician tax credit. In this order, he notes that § 40-18-131(1), defines a "rural physician" 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." He continues by noting that this definition contains three requirements: the physician must (1) be licensed to practice medicine in Alabama; (2) practice and reside in a small or rural community; and (3) have admission privileges to a small or rural hospital.

In § 40-18-131(2), a small or rural community is defined as a community that has less than 25,000 residents and has a hospital with an emergency room. In the analysis, emphasis is added to the fact that, in order to qualify as a "rural physician" and thus qualify for the credit, the physician must practice AND reside in a small or rural community. More specifically, the community must also have an emergency room. The requirement that the physician must have admission privileges to a small or rural hospital is considered after the physician has met requirements (1) and (2) above.

In this case, the taxpayer's credit was disallowed by the Department and affirmed by the Tribunal because, although the taxpayer practiced in a rural area, she did not practice in the same area in which she resided and thus did not meet the second (2) requirement of practicing and residing in a small or rural community.

Based on the information submitted, you meet the first (1) requirement of being a physician licensed to practice medicine in Alabama, however, you do not meet the second (2) requirement of practicing and residing in a small or rural community because you do not practice in the same area in which you reside. Therefore, the adjustment notice dated April 2, 2018, is correct.

Dr. Dean's rebuttal to the Revenue Department stated the following:

This letter is in response to your letter of April 27, 2018 (the "Letter"), further explaining the Department's denial of my claim for the rural physician tax credit for the 2017 tax year. In the Letter, the Department contends that the credit has been disallowed because I do not meet the second statutory requirement of practicing and residing in a small or rural community since I do not practice in the same area in which I reside. However, there is no such requirement that a physician both practice and reside in the *same* rural community; rather, Ala Code § 40-18-131(1) quite plainly states that a physician must "practice and reside in a small or rural community ... ". Further, there are no administrative regulations imposing such a condition.

Contrary to the Department's assertion in the Letter, the Opinion and Final Order entered in *Sharpe v. State of Alabama Department of Revenue*, Docket No. INC. 17-452-JP, on February 5, 2018, does not interpret the statute to require a physician to both practice and reside in the same rural community. In that matter, the Tribunal noted that although the taxpayer presumably practiced in a small or rural community, the taxpayer did not reside in such a community because her community of residence did not have a hospital with an emergency room as required by the statute. The Tribunal did not deny the credit because the taxpayer did not both practice and reside in the *same* small or rural community. Indeed, nowhere in its ruling does the Tribunal draw such a distinction.

As noted in Sharpe, "the credit was created by the legislature", and the Department "must follow the wording chosen by the legislative body." I meet all of the criteria set forth in the plain language of the statute, including, as previously demonstrated, both practicing and residing in a small or rural community. It is not for the Department to impose conditions not otherwise required by statute. "[T]he specific language of the statute must control." Final Order, *Woods v. State of Alabama Department of Revenue*, Docket No. INC. 16-1079, entered April 18, 2017.

In consideration of the foregoing, I again ask that the Department reconsider its determination in this matter and allow the claim of the tax credit for the 2017 tax year.

The flurry of letters ended with this response from the Revenue Department:

Based on the code sections previously cited and the analysis provided by Alabama Tax Tribunal Chief Judge Patterson in the final order entered in *Sharpe v. State of Alabama Department of Revenue*, the Department does not believe that you qualify for the rural physician tax credit because you do not practice and reside in the same rural community. If you disagree, you may file an appeal with the Alabama Tax Tribunal.

In their Notice of Appeal, the Taxpayers argued that Dr. Dean met all the criteria for claiming the credit and that the Revenue Department was required to follow the plain wording of the legislature. More specifically, the Taxpayers argued that there was no requirement that a physician practice and reside in the same rural community, as claimed by the Revenue Department in its two most recent letters.

In its Answer, the Revenue Department conceded that Dr. Dean was a licensed physician. And the Revenue Department acknowledged "that the Department may not rely solely on the designation of a Statistical Metropolitan Area by the U.S. Census Bureau to determine whether a given community is or is not 'rural' in character," citing *Woods v. State of Alabama Department of Revenue*, Alabama Tax Tribunal, No. Inc. 16-1079 (April 18, 2017). However, the Revenue Department continued to take the position that the

Taxpayers were not entitled to the credit, relying upon a different reason than the ones stated in its previous letters to the Taxpayers, as follows:

Nevertheless, the Department disagrees with the Taxpayer that his home is located within a “small or rural community.” This is so because the Department considers the four adjacent cities of Muscle Shoals, Florence, Tuscumbia, and Sheffield to constitute one “community” for purposes of the statutory definition cited above. While the *Woods* case, cited above, held that the Department may not rely upon Statistical Metropolitan Areas to define a “community,” neither did it hold, as the Taxpayer implicitly argues, that the definition of a “community” was restricted to be synonymous with “municipality.” Taken to its logical conclusion, for example, the Taxpayer’s argument would indicate that the City of Mountain Brook, Alabama (population 20,413 in 2010, and until recently home to Trinity Medical Center and its emergency room) should qualify as a “small or rural community,” despite being nestled within the heart of the Birmingham metropolitan area and being home to large numbers of physicians. Subtract 168 residents and the same could be said for its neighbor Homewood (2010 population 25,167), home to many physicians and the massive Brookwood Baptist Medical Center. If the home of every physician residing in Mountain Brook and Homewood can be thought to be in a “small or rural community” (or nearly so), it would seem that the stated legislative purpose of the credit as stated in § 40-18-130, to “reduce inequities that a small or rural hospital and small or rural communities have in the funding and recruitment of physician services,” would be frustrated. Mountain Brook and Homewood are fine cities, but they face no particular inequity in attracting physicians to live and practice there. The same could be said, for example, for Northport, Alabama (population 23,330 in 2010), immediately adjacent to Tuscaloosa and home to Northport DCH Hospital and its emergency room. The same could likely be said of a number of other municipalities in Alabama that, although appearing to qualify if judged entirely on their own as freestanding municipalities, are in fact of the same “community” with one or more adjacent or nearby city or cities.

The Department contends that this is the case for the cities of Muscle Shoals, Florence, Tuscumbia, and Sheffield, Alabama, which abut each other and constitute one continuous area of urbanization. In 2010, these four cities had a combined population of 69,937. Were all these four municipalities combined into one city, it would be Alabama’s seventh largest, falling between Tuscaloosa (pop. 77,906) and Hoover (pop. 62,742). Further, these cities are often and generally referred to collectively as the “Quad Cities.” They collectively constitute one and the same community. And, because that community has many more than 25,000 residents, it does not qualify as a “small or rural community,” even if constituent parts of it contain

fewer than 25,000 persons.

(footnote omitted)

The Revenue Department made no argument in its Answer that a physician must reside and practice in the same small or rural community. Instead, it stated that “a taxpayer must both live and work in a ‘small or rural community.’ The Department believes that Muscle Shoals [where Dr. Dean resides] and Sheffield, Alabama [one of the cities where Dr. Dean practices], fail to qualify as ‘small or rural communities,’ because the community of reference is the combined Quad-cities area of Muscle Shoals, Florence, Sheffield and Tuscumbia.” (underline in original)

In reply, the Taxpayers noted that the phrase “small or rural community” is defined in § 40-18-131(2) only as “[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,” with no further definition of the term “community.” The Taxpayers also noted that the Revenue Department has not adopted any rules to define those terms or to aid in administering the credit.

The Revenue Department responded by stating that the Taxpayers were incorrectly using the word “community” in § 131(2) as a synonym for the word “municipality.” “Had the Legislature intended this result, however, it could have used the word ‘municipality.’ It chose not to, and the Legislature’s choice in this regard must have effect.” Thus, the Revenue Department argued that a “community,” for purposes of the credit, is not the same as a municipality, but can be something larger or smaller.

#### Analysis

By defining the phrase “small or rural community” as “[a] community. . .,” the Act



provided no direct guidance concerning the question presented here. But the definition did provide a clue, *i.e.*, a reference to “the latest decennial census.” Therefore, the Tax Tribunal looks to census law for guidance.

The Bureau of the Census is an agency within the United States Department of Commerce. 13 U.S.C. § 2. Pursuant to 13 U.S.C. § 141(a), the Secretary of the Department of Commerce is directed to, “in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the ‘decennial census date’ . . .” That count “of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months . . . and reported by the Secretary to the President of the United States.” § 141(b). Section 141 also requires a mid-decade census of population in 1985 and every ten years thereafter, but the information obtained in that census is not used for the apportionment of congressional representatives or for prescribing congressional districts. § 141(d) and (e)(2).

By regulation, the Census Bureau provided the following:

(a) As part of the regular program of the 1980 census, the Census Bureau will publish printed reports containing certain summary population and housing statistics for each city block, drawn from the subjects which are being covered on a 100-percent basis. For these subjects, a substantial amount of additional data by block will be available on computer tape.

15 C.F.R. § 50.40.

Concerning the additional block data that is gathered from the decennial census, the Bureau regularly prepares that information for two separate and distinct geographical units – an “urbanized area” and an “incorporated place.” 15 C.F.R. § 50.40(b). The Bureau states that “[a]n urbanized area is delineated by the Census Bureau in each standard

metropolitan statistical area and generally consists of a city or group of contiguous cities with a 1970 population of 50,000 or more, together with adjacent densely populated land (*i.e.*, land having a population density of at least 1,000 persons per square mile)." § 50.40(b)(1). By contrast, an "incorporated place" is "outside urbanized areas" and is referred to as "a city or village" that had 10,000 or more inhabitants based on certain population measurements from the 1970s. § 50.40(b)(2).

A third geographical unit also was addressed by the Bureau:

(c) Outside the above-mentioned urbanized areas and places, State and local government authorities will be able to contract with the Bureau of the Census to produce block data for their areas. In undertaking this contract, the requesting authority will be required to pay a fee, supply certain maps, and meet certain time deadlines as follows:

...

(iii) The cost for an area with a population of 10,000 or more will be determined on an individual basis.

...

(vi) Any incorporated place which contracts for block statistics and which reaches a population of 10,000 or more in the 1980 census will have the fee completely refunded, as the place will then be considered to be part of the regular block statistics program.

15 C.F.R. § 50.40(c).

In summary, the Census Bureau differentiates between three geographical units – an "urbanized area," an "incorporated place," and "areas." An "urbanized area" generally is a city or group of contiguous cities with a population of 50,000 or more, with adjacent land that is densely populated. An "incorporated place (such as a city or village)" is outside of urbanized areas and has a population of 10,000 or more. And an "area" can be incorporated or unincorporated but, if it is incorporated, its population must be less than 10,000.

Clearly, the Census Bureau's differentiation places those geographical units into two distinct categories – urban and rural – with “incorporated places” (which are located “outside urbanized areas”) and “areas” (which also are expressly excluded from “urbanized areas”) falling into the rural category. See *also* the definition of “rural” in Black's Law Dictionary, 5<sup>th</sup> Ed., as “[c]oncerning the country, as opposed to urban (concerning the city).”

These two categories correspond to the categories in Alabama's tax credit. Obviously, the credit at issue in this appeal is the **rural** physician tax credit. And a physician who practiced in a small or rural community in Alabama prior to the effective date of the Act is prohibited from claiming the credit unless “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.” Ala. Code § 40-18-132 (emph. added).

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.

Here, it is undisputed that Dr. Dean resided in an incorporated place, the City of Muscle Shoals, and that Muscle Shoals had a population of less than 25,000 according to the latest decennial census and had within it a hospital with an emergency room. Consequently, the Taxpayers qualified for the rural physician tax credit, and the Revenue Department erred by denying the part of the Taxpayers' refund that was attributable to the credit. The Revenue Department's denial of the credit is reversed, and the Revenue Department is directed to issue the Taxpayers their full refund, plus any applicable interest, in due course. Judgment is entered accordingly.

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

Entered January 29, 2020.

*/s/ Jeff Patterson*

JEFF PATTERSON  
Chief Judge  
Alabama Tax Tribunal

jp:dr

cc: Phillip & Jennifer Dean  
Ralph M. Clements, III, Esq.