

RADWAN & MAISSA KOUKA MALLAH §
541 St. Lauren Way
Birmingham, AL 35242-6446, §
DIVISION

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW

Taxpayers, § DOCKET NO. INC. 00-728

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed 1998 and 1999 Alabama income tax against Radwan and Maissa Kouka Mallah (together "Taxpayers"). 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 February 6, 2001. Dr. Radwan Mallah (individually "Taxpayer") attended the hearing. Assistant Counsel Mark Griffin represented the Department.

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

The Taxpayer and his family moved to Selma, Alabama in 1994. The Taxpayer practiced medicine in Selma through 1995. The Taxpayers claimed the \$5,000 rural physician tax credit on their 1994 and 1995 Alabama returns. The Department accepted those returns as filed.

The Taxpayer and his family moved to Hoover, Alabama in January 1996. The Taxpayer worked in emergency rooms in Oneonta, Gadsden, and Roanoke, Alabama from January 1996 until May 1998. The Taxpayers and their children resided in their house in Hoover, Alabama during that period.

The Taxpayer began working at the Craddock Health Center in Sylacauga, Alabama in May 1998. The Taxpayer also had admission privileges at Coosa Valley Medical Center in Sylacauga.

The Taxpayer rented an apartment in Sylacauga from July 1998 until July 1999. He stayed at the apartment one or two nights a week, as dictated by the needs of his patients. The remainder of the time, the Taxpayer commuted to Sylacauga from his home in Hoover. The Taxpayer stopped practicing in Sylacauga in February 2000.

The Taxpayers claimed the \$5,000 rural physician tax credit on their 1998 and 1999 Alabama returns. The Department denied the credits, and entered the final assessments in issue. The Taxpayers appealed.

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).

The final assessments are affirmed. Judgment is entered against the Taxpayers for 1998 tax and interest of \$5,654.66, and 1999 tax and interest of \$1,339.14. Additional interest is also due from the date of entry of the final assessments, November 7, 2000.

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

Entered February 15, 2001.