

ALABAMA TAX TRIBUNAL

JOSEPH MOSSAD, §
Taxpayer, § DOCKET NO. INC. 21-671-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE

OPINION AND FINAL ORDER

This appeal involves the Alabama Department of Revenue’s partial denial of the Taxpayer’s request for a refund of individual income tax for tax year 2020. A trial was held on July 6, 2023. The Taxpayer appeared and testified. Ralph Clements represented the Revenue Department, and Jennifer Williams, the Revenue Department’s auditor, appeared for trial.

Background

The Taxpayer’s sole challenge is the Revenue Department’s denial of his claim to the Rural Physician Tax Credit (sometimes referred to as “the Credit”). See Ala. Code §§ 40-18-130—133. The Taxpayer testified that he works as a physician at Bibb Medical Center in Centreville and resides in Brent, 2.1 miles from the hospital. According to the Taxpayer, Centreville has 2,200 residents, and Brent has 4,400. The Tax Tribunal takes judicial notice that both Centreville and Brent are in Bibb County, which, according to the United States Census data, had 22,293 residents in 2020.¹

¹ <https://www.census.gov/quickfacts/fact/table/bibbcountyalabama/POP010220>; See, e.g., *Lifestar*

The Taxpayer testified, and the Revenue Department conceded, that Centreville and Brent abut one another. The Taxpayer testified that Centreville and Brent function as one community and share social and economic resources. For instance, Centreville and Brent share a library and have shared events such as the Fourth of July celebration. The Taxpayer contends that he both lives and practices in the same community.

The Revenue Department concedes that the Taxpayer is a licensed physician, that Bibb Medical Center is a “small or rural hospital,” and that Centreville meets the definition of a rural community. The Revenue Department also concedes that Centreville and Brent “function” as a community and that the Taxpayer was within the class of those that the statute intended to benefit. The Revenue Department points out, though, that, despite Centreville and Brent “functioning” as one community, they are still separate municipalities and, therefore, separate communities. Accordingly, the Revenue Department argues that the independent municipal community of Brent does not meet the definition of a “small or rural community” because it does not have within it a hospital with an emergency room. The Revenue Department draws on the precedent set by the Tribunal in *Henderson v. Alabama Department of Revenue, INC.* 18-985-JP (Ala. Tax Trib. Aug. 9, 2021), and *Dean v. Alabama Department of Revenue, INC.* 18-569-JP (Ala. Tax Trib. Jan. 29,

Response of Alabama, Inc. v. Lemuel, 908 So. 2d 207, 219 (Ala. 2004) (taking judicial notice of population established by the federal decennial census).

2020), to argue that, because Brent and Centreville are separate municipalities, they cannot belong to the same community as contemplated in the relevant statute.

Discussion

Alabama Code § 40-18-132 provides, in pertinent part: “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.” “Rural physician” is defined in Alabama Code § 40-18-131(1), 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.”² A qualifying “small or rural community” is defined in Alabama Code § 40-18-131(2) 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.” (emphasis added).

The present case is the latest in a continuing series of cases before the Tax Tribunal questioning the ambiguities of the Rural Physician Tax Credit. Here, the parties disagree over what qualifies as a “community” for purposes of the definition of “small or rural community”. The Tax Tribunal recognized in *Woods v. Alabama Department of Revenue, INC.* 16-1079 (Ala. Tax Trib. Apr. 18, 2017), that Alabama law does not allow for the aggregation of populations in its decision to allow the Rural Physician Tax Credit. Further, in *Dean v. Alabama Department of Revenue, INC.* 18-

² As stated, the Revenue Department concedes that Bibb Medical Center meets the definition of a “small or rural hospital”. Therefore, that definition will not be discussed in this opinion.

569-JP, at 11-12 (Ala. Tax Trib. Jan. 29, 2020), the Tribunal looked to census law for guidance, because of the reference to “the latest decennial census” within the statute, and explained:

[T]he 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. . . .

. . . .

[F]or the 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.

Such categorization finds further credence in the definitions provided by

Black's Law Dictionary. There, "rural" is defined as "[c]oncerning the country, as opposed to urban (concerning the city)," *Rural*, Black's Law Dictionary (5th ed. 1979) 1197; and "community" is defined as follows:

Neighborhood; vicinity; synonymous with locality. People who reside in a locality in more or less proximity. A society of people living in the same place, under the same laws and regulations, who have common rights, privileges, or interests. It connotes a congeries of common interests arising from associations—social, business, religious, governmental, scholastic, recreational.

Community, Black's Law Dictionary (5th ed. 1979) 254 (internal citations omitted).

These definitions convey that a "rural community" is a localized group of individuals living in proximity in country areas and subject to the same set of laws and regulations. The Tribunal ultimately recognized the Taxpayer's entitlement to the Rural Physician Tax Credit in *Dean* as "it [was] undisputed that [the Taxpayer] resided in . . . the City of Muscle Shoals, and that Muscle Shoals had a population of less than 25,000 . . . and had within it a hospital with an emergency room." *Dean*, INC. 18-569-JP at 12.

Unfortunately for the Taxpayer, the facts presented here are more akin to those of *Sharpe v. Alabama Department of Revenue*, INC.17-452-JP (Ala. Tax Trib. Feb. 5, 2018), and *Henderson v. Alabama Department of Revenue*, INC. 18-985-JP (Ala. Tax Trib. Aug. 9, 2021), than to those of *Dean*. As is the case here, each of the taxpayers in *Sharpe* and *Henderson* resided in one community that did not have a qualifying hospital, but practiced in a distinct community that did possess a

qualifying hospital.³ The Tax Tribunal ultimately ruled in both *Sharpe* and *Henderson* that the lack of a qualifying hospital in the communities in which the respective taxpayers lived precluded the taxpayers from successfully claiming the Rural Physician Tax Credit.⁴ In *Henderson* specifically, the Tax Tribunal explained that the taxpayers could not “claim Alexander City . . . as their residential community . . . [because] the Taxpayers did not reside in Alexander City, ‘which [was] the only geographical unit under discussion . . . [with] a hospital with an emergency room.[.]”

The Taxpayer here makes the same essential argument as those of the taxpayers in *Henderson*, with the representation that his residence is in Brent, Alabama, and his practice is in Bibb Medical Center in Centreville, Alabama. The Taxpayer does not contest the fact that Brent and Centerville are distinct municipalities. Instead, he argues that, because these municipalities abut one another and are both entirely within Bibb County, they should be construed as one community. This argument is understandable due to the ambiguity of the Rural Physician Tax Credit; however, it is not consistent with the rulings of the Tax Tribunal or the definitions of “community” and “rural” recognized by the law.

³ In *Sharpe*, the taxpayer resided in Saraland, Alabama, but practiced at Infirmary North Baldwin in Bay Minette, Alabama. *Sharpe*, INC.17-452-JP at 3-4. In *Henderson*, the taxpayer resided in Jackson’s Gap, Alabama, but practiced at Russell Medical Center in Alexander City, Alabama. *Henderson*, INC. 18-985-JP at 3.

⁴ In *Sharpe*, the Tax Tribunal’s final holding was solely that the taxpayer “did not meet the statutory definition of a ‘rural physician’ for purposes of the tax credit.” *Sharpe*, INC.17-452-JP at 4. Neither party in *Sharpe* raised the issue of whether Saraland and Bay Minette constituted one community, likely because of the roughly twenty miles between the localities.

Instead, Brent and Centreville are distinct, incorporated municipalities each featuring their own municipal governments⁵ and, inherently, subject to separate sets of laws and regulations in the form of their respective city ordinances.⁶ Again, Alabama law does not allow the aggregation of populations, *see Woods, supra*, and thus the Tribunal must determine whether the community in which the Taxpayer practices and in which he resides satisfies the statutory requirements laid out in the Rural Physician Tax Credit. Unfortunately, those requirements are not satisfied here as Brent, Alabama, does not contain a qualifying hospital, and the Taxpayer cannot claim the separate community of Centreville, Alabama, wherein Bibb Medical Center lies, as his residence.

Finally, it must be mentioned that a common and recurring feature of hearings involving the Rural Physician Tax Credit is the general agreement among the participants of the need to amend the statute providing the Credit so that it successfully serves the purpose for which it was implemented. Here, even the Revenue Department agreed that the Taxpayer is a rural physician that should qualify for a tax credit benefiting rural physicians. However, as discussed at length above, Alabama Code §§ 40-18-130 to 133 as currently written preclude physicians

⁵ See City Government, THE CITY OF BRENT ALABAMA, <http://www.cityofbrentalabama.com/citygovernment.html>; City Hall, CITY OF CENTREVILLE, <https://www.cityofcentreville.com/Default.asp?ID=424&pg=City+Hall>.

⁶ See Municipal Court, THE CITY OF BRENT ALABAMA, <http://www.cityofbrentalabama.com/municipalcourt.html>; Municipal Court, CITY OF CENTREVILLE, <https://www.cityofcentreville.com/Default.asp?ID=426&pg=Municipal+Court>.

such as the Taxpayer from such a benefit. There is a great need to resolve this discordance through legislation applicable to all open tax years that amends the statute. This need was acknowledged by several members of the Alabama House of Representatives with the introduction of House Bill 291 during Alabama's 2024 Regular Legislative Session. This Bill sought to raise the tax credit to \$10,000.00 per tax year; redefine rural communities as the unincorporated areas of counties with population of 50,000 or less inhabitants, and municipalities with populations of 20,000 or less inhabitants within such counties; and require the Alabama Statewide Area Health Education Center Program Office to administer the program and issue certificates to physicians it deemed qualified for the tax credit. H.B. 291, 2024 Reg. Sess., (Ala. 2024). Unfortunately, mere acknowledgment was all that was received, as the Bill was merely read once and referred to the Ways and Means Education Committee of the House of Representatives before the end of the session.

Conclusion

Therefore, the Revenue Department's decision to disallow the Rural Physician Tax Credit to the Taxpayer is upheld. Thus, the Revenue Department's reduction of the Taxpayer's claimed refund from \$1,236.00 to \$218.00 is upheld. The Revenue Department is directed to refund the Taxpayer's overpayment of \$218.00, plus applicable interest, in due course.

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 September 27, 2024.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:thb

cc: Joseph Mossad
Ralph M. Clements, Esq.