

JONATHAN & SHAWNITA ABERNATHY
509 Bradbury Drive
Columbia, SC 29203,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NOS. INC. 01-402
INC. 01-416
INC. 01-417

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

OPINION AND PRELIMINARY ORDER

The Revenue Department jointly assessed Jonathan and Shawnita Abernathy (Taxpayers) for 1996 and 1997 Alabama income tax, and separately assessed them for 1998 Alabama income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(b)(5)a. The appeals were consolidated and heard on September 11, 2001. The Taxpayers attended the hearing. Assistant Counsel Keith Maddox represented the Department.

ISSUE

The issue in this case is whether the Taxpayers were both domiciled in Alabama in 1996, 1997, and 1998, and thus liable for Alabama income tax on their income earned in those years.

FACTS

Jonathan Abernathy was born and raised in Alabama. Shawnita Abernathy was born in Columbia, South Carolina. Her parents were in the U.S. military, and she moved with them to various assignments in the 1970s and 1980s. She moved to Alabama in June 1989 when her mother was transferred from Alaska to Fort McClellan in Alabama. Her mother's official home remained in Alaska after they moved to Alabama. She met Jonathan Abernathy while at Fort

McClellan. They married in November 1993.

Jonathan Abernathy joined the Navy in February 1993. He attended basic training outside of Alabama from February 1993 until November 1993. He was assigned to Norfolk, Virginia from November 1993 until August 1996; to Jacksonville, Florida from August 1996 to October 1998; to Pensacola, Florida from October 1998 to December 1998; and to Atlanta, Georgia from December 1998 to present.

Shawnita Abernathy stayed in Alabama and finished school from November 1993 until May 1994, when she joined her husband in Virginia. When her husband transferred to Jacksonville, Florida in August 1996, she moved to Orlando, Florida and lived and worked at Disney World until December 1996. She moved to an apartment in December 1996, and continued working in Orlando until March 1999. She is currently attending school and residing in Columbia, South Carolina.

Jonathan Abernathy filed Alabama income tax returns through 1998. He officially changed his residence to Florida on his military records in September 1998. Consequently, his 1998 Alabama return included only his income earned through September 1998.

Shawnita Abernathy filed a part-year 1994 Alabama return, but did not file Alabama returns in subsequent years because she has not resided in Alabama since 1994.

The Department received IRS information concerning the Taxpayers' 1996, 1997, and 1998 federal liabilities, and assessed the Taxpayers accordingly. Because Jonathan Abernathy filed Alabama returns and paid Alabama tax in 1996 and 1997, the assessments for those years are based entirely on Shawnita Abernathy's income earned in those years. The 1998 final assessments include the income earned by both Taxpayers because Jonathan

Abernathy had not filed his 1998 Alabama return before the final assessment was entered. As indicated, he subsequently filed a 1998 Alabama return. He reported his income earned through September 1998, and remitted the reported tax due of \$357, plus \$49 estimated interest.

ANALYSIS

All individuals domiciled in Alabama are subject to Alabama income tax, regardless of where they reside during the tax year. Code of Ala. 1975, § 40-18-2(7). A person's domicile is his true, fixed home to which he intends to return when absent. The burden is on a person claiming a change of domicile to prove that a change has occurred. A change occurs only if a person abandons Alabama with the intent not to return, and establishes a new residence outside of Alabama with the intent to remain at the new location permanently, or at least indefinitely. See generally, *Whetstone v. State*, 434 So.2d 796 (Ala. 1983).

When an Alabama resident joins the military, the individual is presumed to remain domiciled in Alabama until proof of change of domicile has been made. @ Dept. Reg. 810-3-2-.01(1)(c). See generally, *Chancellor v. State of Alabama, Inc.* 96-437 (Admin. Law Div. 1/29/97).

In this case, after Jonathan Abernathy joined the Navy and moved from Alabama in 1993, he was assigned to various locations for different periods of time. There is no indication that he established a permanent residence in any of those locations with the intent to remain permanently, until he officially changed his residence on his military records to Florida in 1998.

Consequently, he properly reported and paid Alabama tax on his income earned through September 1998. He is not liable for Alabama income tax after that time.

Concerning Shawnita Abernathy, she moved to Alabama from Alaska with her mother in 1989. Her mother was in the military, and retained Alaska as her official home while stationed in Alabama. Applying the rule of law that a person in the military, and their dependents, remain domiciled in their state of origin while in the military, unless a change of domicile is otherwise established, Shawnita Abernathy and her mother retained Alaska as their home and domicile while in Alabama. Consequently, because Shawnita Abernathy was never domiciled in Alabama, she is not liable for Alabama income tax after she left Alabama in 1994.¹

The 1996 and 1997 joint assessments based on Shawnita Abernathy's income earned outside of Alabama in those years are dismissed, as is the 1998 final assessment entered against Shawnita Abernathy, individually.

The 1998 final assessment entered against Jonathan Abernathy is based on IRS

¹Even if she had been domiciled in Alabama before she left in 1994, she never intended to return to Alabama to live. She testified that she intended to live permanently in Florida after she moved there in August 1996, which arguably would have changed her domicile to Florida. She also would have been entitled to a credit for income tax paid to Virginia when she lived there.

information. As indicated, after the final assessment was entered, he filed a 1998 return and paid the reported tax due of \$357, plus estimated interest of \$49. The Department should notify the Administrative Law Division if it will accept the return as filed, and if so, what penalties and interest, if any, are due. An appropriate Final Order will then be entered.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days. Code of Ala. 1975, ' 40-2A-9(g).

Entered October 12, 2001.