

Want to avoid a big tax hit because you live and work in different states? Help is on the way

By [Jason Notte](#)

Published: May 31, 2017 10:49 a.m. ET

A former MLB exec turns his troubles with domicile law into an app for all traveling workers



Jonathan Mariner.

Jonathan Mariner, a Major League Baseball executive who lived in Florida but worked in New York, learned the hard way how complicated and expensive it can be to live and work in different states when it comes to paying taxes. So he created an app to help businesspeople, athletes and anyone who lives or works in multiple states.

In 2002, while still living in Florida, Mariner began a nearly 13-year stint as both executive vice president and chief financial officer at Major League Baseball. He'd signed a contract to work in New York, but still had his home, family, driver's license and voter registration in Florida.

“New York was not a place I'd had a burning desire to work in — I'd raised my family in Florida and my youngest son was a senior in high school when I started in New York — so I kept my residence in Florida, commuting back and forth,” he says. “In my mind, I had this 180-day threshold over which, if you pass it, you become a full-time resident.”

Also see: [Get your kids to play these sports to boost their chance at a college scholarship](#)

New York state had other ideas. Its domicile law has a 183-day threshold separating visitors from permanent residents, but it counts partial days for business meetings and travel time against that total. In 2008, the state sent Mariner a notice telling him that it wanted to audit his tax filings from 2005 to 2007. He later received another notice that he was being audited for 2008 and 2009 as well.

“What I found out going through the audit was that it's not this amorphous, 180-day rule that people have going on in the back of their minds and, furthermore, how you count the day matters,” Mariner says. “I would fly into New York on a Sunday evening and not count Sunday or fly out early and not count that day.”

How you count the days can really matter to your bank account. If you go over the 183-day threshold in New York, for example, “all of your income — capital gains, passive income, interest income, the house you sell in Florida — it all gets taxed in New York as well,” he says.

Just about anyone who has to travel across state lines for work and live in other states for a while — from baseball team owners to independent contractors — has to contend with domicile law. However, even people as well-versed in it as Mariner can run into trouble. In 1992, when he was chief financial officer of the then-Florida Marlins, who were about to begin their inaugural season, Mariner set up the team's payroll system without an income tax, since Florida doesn't have one. However, once the Marlins' season began in 1993, the team's tax adviser told Mariner that he'd have to sit down before the Marlins' first away games against the Colorado Rockies and calculate three days' pay for every player, coach and other worker making the trip. He'd then have to calculate the state income tax, deposit it and issue a separate W2 form for the State of Colorado. This is something called the "jock tax."

Also see: [This is what a pro athlete's tax return looks like](#)

When Mariner arrived at Major League Baseball in 2002, he faced a different challenge with umpires. Unlike players, umpires are paid from the beginning of the year onward and don't know their game assignments until Spring Training and the regular season commence. Depending on their spring training assignments, they either had to pay a tax in Arizona's Cactus League or pay none in Florida's Grapefruit league.

Some extremely wealthy people have staff to help keep track of their days. For example, one of Mariner's former bosses, John Henry, who once owned the Florida Marlins and now owns the Boston Red Sox and Liverpool F.C. "With John being in Massachusetts, I knew his assistant Sylvia kept track of his days very rigorously," he says. "I knew nobody could track all of my travel the way Sylvia did for John Henry, so I thought there should be an app out there and I'd call up my accountant and see if we could work on something."

Mariner's efforts resulted in the Tax Day app, which helps users both track their days in other states and document their activities in those states. His accountants looked at the tax risks for all 50 states and created a matrix determining how each state defines full-time residents, part-time residents and nonresidency. As it turns out, states across the country use 11 different thresholds for full-time residency. While 21 states set a 183-day bar, which is one day over half the year, others vary their measure from three months to six months. There are also seven different ways that states count days. New Jersey, for example, considers one minute spent in the state a full day. Ohio requires an overnight stay, but New York will count a day even if you take a business trip and leave on the same day.

Also see: [How the NCAA is helping student athletes get jobs with Fortune 500 companies](#)

After attending a tax conference in New York in November, Mariner discovered that a New York data analysis venture with IBM uses information from various institutions to check every tax return against more than 1 billion pieces of data in the program's database — to see how many days a person is really in New York state. They're checking credit card records, toll pass records, hotels, sales tax and other records for discrepancies and sending out more audit notices without increasing personnel. As Mariner points out, the program doesn't necessarily target voters, but people who may reside and vote elsewhere. As other states adopt similar measures to increase tax revenue without increasing taxes, more traveling taxpayers may be scrutinized more thoroughly.

Mariner's app costs \$10 a month and uses both GPS and user photographs of receipts and other documentation to count days. It updates automatically if a state changes laws.

"Given the tax revenue at stake, establishing a change in domicile can be a highly contentious issue, especially for individuals with large amounts of out-of-state income in play," says Laurie Samay, an associate with Palisades Hudson

Financial Group's Scarsdale, N.Y., office. "New York in particular has carved out a reputation for aggressively working to prove that taxpayers are domiciled in the state, even when such claims defy common sense."

As Mariner discovered, however, the burden of proof isn't on the state to prove you were there: It's on you to prove that you weren't. It's why his Tax Day app uses your smartphone's GPS to track your state-to-state movements, allows you to upload photos of various receipts to back up its claims and stores it all on the cloud to be accessed from any device. If you're traveling to Alaska, Florida, Nevada, South Dakota, Texas, Washington or Wyoming — the only states that don't have an income tax — this won't be a problem. But if you find yourself living in one of these states and working in another, it may help to take a picture of your dog at home on a day you're in that state as well.

Gregory Blatt, chairman of Match.com, owner of Match Group, recently won a case against New York state by arguing that moving his elderly dog to his home in Texas in 2009 was evidence of his Texas residency. Granted, he started paying New York state again when he moved back in 2011 to become chief executive of Match's parent company IAC, but that's beside the point. Though Mariner's Tax Day app may come in handy for his old boss John Henry, domicile law affects far more than team owners, ballplayers and umpires. Hedge-fund managers, consultants, contractors, accountants, attorneys, engineers and enlisted military personnel all have to deal with domicile law and are responsible for documenting their days of residency.

Mariner's app has fewer than 1,000 users so far, and he's initially targeting accounting firms and their clients to spread the word about its capabilities although anyone can download it. He self-financed the app and claims to have a tentative deal in place with one of the "big four" accounting firms — Deloitte, PriceWaterhouseCoopers, Ernst & Young or KPMG — as well as some smaller accounting groups. It's currently available in the iPhone store, and there will be an Android version soon.

Jason Notte is a freelance writer based in Portland, Ore. His writing has appeared in the New York Times, the Huffington Post and Esquire. Notte received a bachelor's degree in journalism from the S.I. Newhouse School of Public Communications at Syracuse University in 1998. Follow him on Twitter [@Notteham](#).

Also see

- [The sports talking head is dead](#)
- [How golfer Greg Norman became a one-man conglomerate](#)
- [Let's hope Las Vegas can keep the lights on if the NFL's Raiders move there](#)