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# Tax Alert



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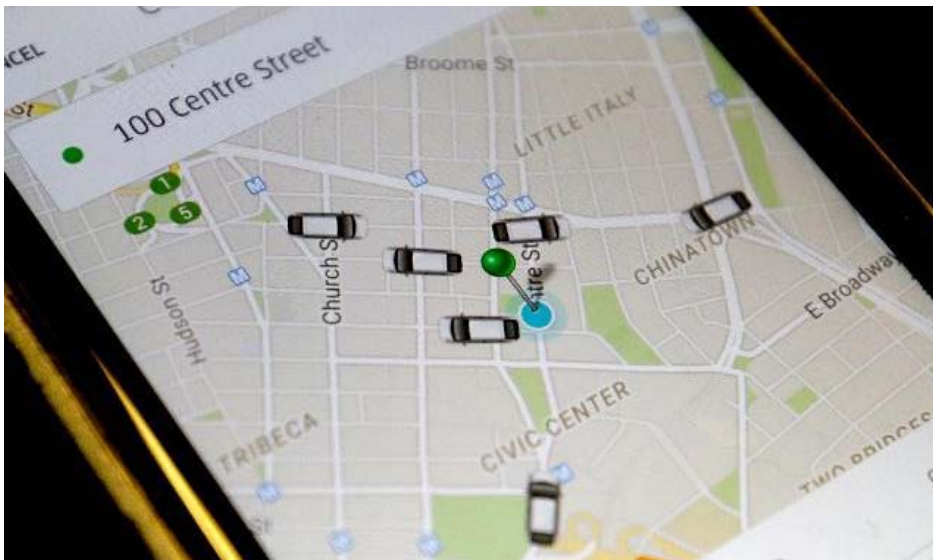
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## If Uber, FedEx, Other Workers Are Employees, Who Pays What?

There is considerable talk these days about the positives and negatives of Uber, Lyft, Sidecar, and many other so-called tech companies. [Now, California has ruled that at least one Uber driver is an employee.](#) The on-demand economy relies on hordes of upstart workers. The companies rely on strong corporate branding yet want an army of service providers that are not employees. At least not on paper, and paper matters, even in our paperless world.

Of course, as recent events show, there are legal arguments that some of these people are *actually* employees. That status can import wage and hour laws, tax obligations, pension and nondiscrimination rules, not to mention company liability for accidents. And that means there could be [big liabilities for Uber, Sidecar and Lyft](#). But what about the tax filings?

Employees get paychecks with tax withholding sent to the IRS and state governments, even to Social Security. Self-employed workers get gross pay with no withholding. They take care of their own taxes, but how they do it may not be discussed. And how much it costs is often quiet too.



Tax filings are done in arrears, and audits are often even further down the line, years ahead. These workers don't get a W-2. They are supposed to fill out a proprietorship schedule, Schedule C to their Form 1040. That is what you fill out if you operate a small business that is not in a legal entity (such as a corporation, LLC or partnership). You may run your business from your garage, smartphone, or on weekends, even though the bulk of your income comes from wages from a regular job.

A sole proprietorship is the simplest way of conducting business. There's no business entity and only one owner (although husband and wife filing taxes jointly count as one). Despite its simplicity, there is no question that Schedule C is a big audit target. Every year the IRS releases its Statistics of Income Bulletin. It is dry reading, but carries such data as the number of tax returns filed, the number of types of returns selected for audit, and other statistical data.

And one thing is clear from these dusty figures. Every year, the IRS looks hard at [Schedule C](#). In fact, most tax professionals will tell you that Schedule C is one of the most likely types of returns (or parts of returns) to be audited. A Schedule C could show just a few dollars, or could be a huge business making millions. Schedule C is also the primary place you claim expenses from your proprietorship business. It's the primary way the IRS can audit a "hobby" activity you claim is a business but the IRS claims is not. Be especially wary if you have several years of losses in a row.

As an independent contractor, you not only owe income tax, but self-employment tax too. On the first \$118,500 of income, that's a whopping 15.3% rate. Beyond \$118,500, the rate drops to 2.9%. In contrast, if you're an employee, you pay only one-half the Social Security tax (your half is 7.65%) on wages up to \$118,500, plus one-half the Medicare rate (your half is 1.45%) on all wages. See [IRS Publication 225](#). Your employer pays the same. If you have income over \$200,000, you're subject to an additional 0.9% Medicare tax withholding. The additional Medicare tax [does not apply to employers](#).

Many start-ups and tech companies want the branding uniformity can provide, but do not want all of the costs and liabilities of employees. Done carefully, such arrangements can be legitimate. However, some companies are downright careless. Some employers treat workers as independent contractors who are clearly employees if anyone bothers to look.

That is where government entities and private parties in lawsuits can ferret out the truth. There are several legal standards, but many boil down to how much control the company has over the worker. Although [some control won't convert independent contractors to employees](#), the question is whether they've gone too far. It may be years before we have final answers on Uber and similar companies. And even when we do, the answer may not be uniform across Uber's vast empire. Just look at how long and arduous the FedEx battles have proven to be, and they are still not over.

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