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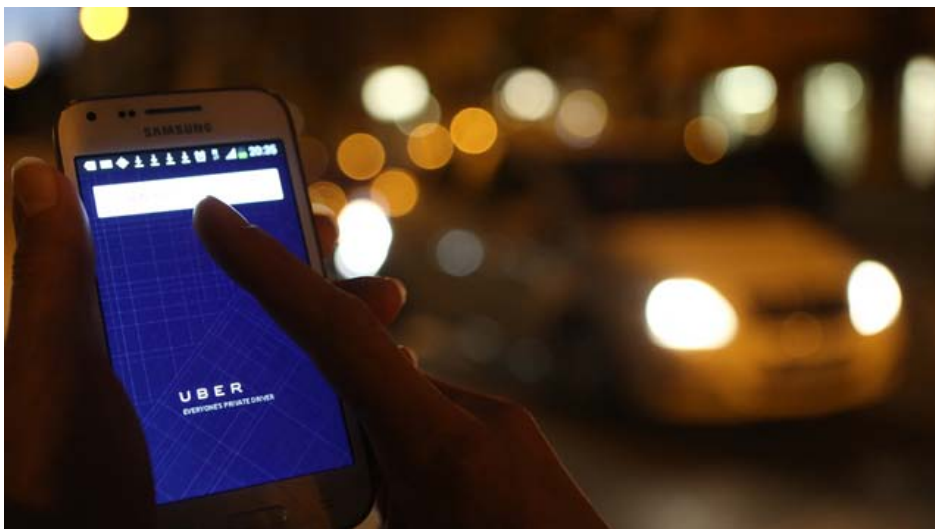
### Uber's Growing Tax Problems

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Uber's latest [\\$1.2 billion in financing](#) and \$40 billion valuation make it a valuation darling, but it's PR problems are, well, huge. It seems often to ruffle rather than smooth feathers. As it fights regulatory and public relations battles, are tax authorities going to crack down too? It isn't just the ubiquitous IRS that may want to hitch a ride to cash in. Consider state tax agencies and even some foreign ones.

It is a tech company, it claims, and just takes a fee for putting passengers and drivers together. Clearly, these drivers aren't employees of the car services—er tech company—at least on paper. Besides, neither the company nor the drivers are likely to even *think* there is an employment or agency relationship viz. third parties. Or is there?

Some [Uber drivers have sued](#) claiming the company takes too large a cut of tips. An even bigger legal exposure is accident liability, and there are already some big cases involving injuries and even death. When a driver has an accident that injures the passenger or a third party, there is recourse to the drivers and their insurance.



(Adam Berry/Getty Images)

Yet a serious or fatal accident can involve millions, far exceeding driver insurance policies. Uber is a clear target, unless the [Communications Decency Act of 1996](#) prevents liability. But it is not far-fetched to imagine verdicts for injured plaintiffs, no matter how the legal niceties are observed.

With taxi companies and in many other industries, the law has been sorting out similar issues for decades. The contracts and the actual course of conduct of the parties are likely to count.

[Independent contractor vs. employee characterization](#) questions span medical malpractice cases, tax disputes, worker compensation and unemployment matters and more. Even employment discrimination and sexual harassment cases. As many tax, employment, insurance and labor disputes reveal, workers labeled as independent contractors may be employees. Arrangements can be genuine or can be independent in name only, with no chance of standing up against the IRS, other agencies or the courts.

And who might be even more aggressive in collecting than accident victims? Taxing authorities. The IRS and state taxing agencies could benefit nicely by getting tax withholding money from Uber on pay to the drivers. And while it is by no means certain that the IRS and state tax agencies will not make a grab for it, it is also not certain that they will not.

After all, look at some companies as FedEx, which has for years fought vigorously to defend its independent contractor method of operation. The delivery giant mostly won, until a key Ninth Circuit ruling that [FedEx misclassified its drivers as independent contractors](#).

Usually, an agency requires a principal and agent like an employer and employee. And the agencies might not be able to stand up to the Uber powerhouse. Yet even franchise operations have sometimes succumbed to recharacterization battles. Take Domino's Pizza, where each store is independently owned, but a [\\$32M verdict says there can still be liability to the company](#).

With Uber's vast valuation, expect more lawsuits, whatever the drivers may be called. As with franchises, Uber may test the legal limits, but consider such basics as:

- The employer's control over the worker;
- The worker's opportunity for profit or loss;
- The worker's investment in facilities;
- The worker's skill set; and
- The duration of the relationship.

If a driver must obey many rules and is subject to the control of Uber, a court could find employee-employer liability. So could a taxing agency. Workers may be labeled as "independent contractors," but labels aren't enough for the IRS.

Uber have roiled the marketplace. But taxing and employment agencies that stand to make money off employees and not off independent contractors are likely to be watching. In that sense, all of the upheaval isn't over. Uber may be making itself more and more attractive as a target with a very deep pocket.

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