



STATE OF CALIFORNIA  
Franchise Tax Board

# Gig Economy and Tax Compliance: Past, Present, and Future

Shane Hofeling, Legal Division  
Susan Maples, Taxpayers' Rights Advocate  
Richard Geck, Audit Division  
October 1<sup>st</sup>, 2019



# Gig Economy and Tax Compliance

## Agenda:

- FTB's Perspective
  - Recent Developments
  - Advocate's Findings
  - 2017 Research Study
- Reporting Requirements
- Research
- Compliance Challenges
- Education & Outreach

# Gig Economy – FTB's Perspective

## Recent Developments - Assembly Bill 5

- Purpose is to Prevent Misclassification of Workers
  - Creates a presumption that a worker is an employee rather than an independent contractor.
  - Codifies the California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903.
- Signed into law on September 18, 2019.

# Gig Economy – FTB's Perspective

## Recent Developments - Assembly Bill 5 (cont.)

Law prior to AB 5 and *Dynamex*

- Standard for Worker Classification was the *Borello* Test
  - *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d.341
- Provided for a 10 factor “Economic Realities” test to determine if a worker was an employee or an independent contractor.

# Gig Economy – FTB's Perspective

## Recent Developments - Assembly Bill 5 (cont.)

### *Dynamex* Standard

- Creates a rebuttable presumption that a worker is an employee rather than an independent contractor.
- Hiring Entity can rebut the presumption by meeting the “ABC” test
  - A. Worker is free from control and direction of the hiring entity in connection with the performance of the work, and
  - B. Worker performs work that is outside the course of the hiring entity's business, and
  - C. Worker is customarily engaged in an independently established business of the same nature as the work being performed.

# Gig Economy – FTB's Perspective

## Recent Developments - Assembly Bill 5 (cont.)

### Exemptions

- Certain industries and professions are not subject to the *Dynamex* Standard.
- Any statutorily exempted entity would apply the *Borello* test to determine worker classification.

# Gig Economy – FTB's Perspective

## Advocate's Findings

### Gig Worker Challenges:

- Did not understand tax filing requirements
- Only limited tax information and guidance available
- Unaware of the need to maintain records
- Not equipped to avoid potential tax liabilities & estimated tax penalties

# Gig Economy – FTB's Perspective

Advocate's Findings (cont.)

Challenges of Finding Gig Information:

- Information available targeted small business owners
- How to classify income for tax purposes
- Information provided to workers from platform



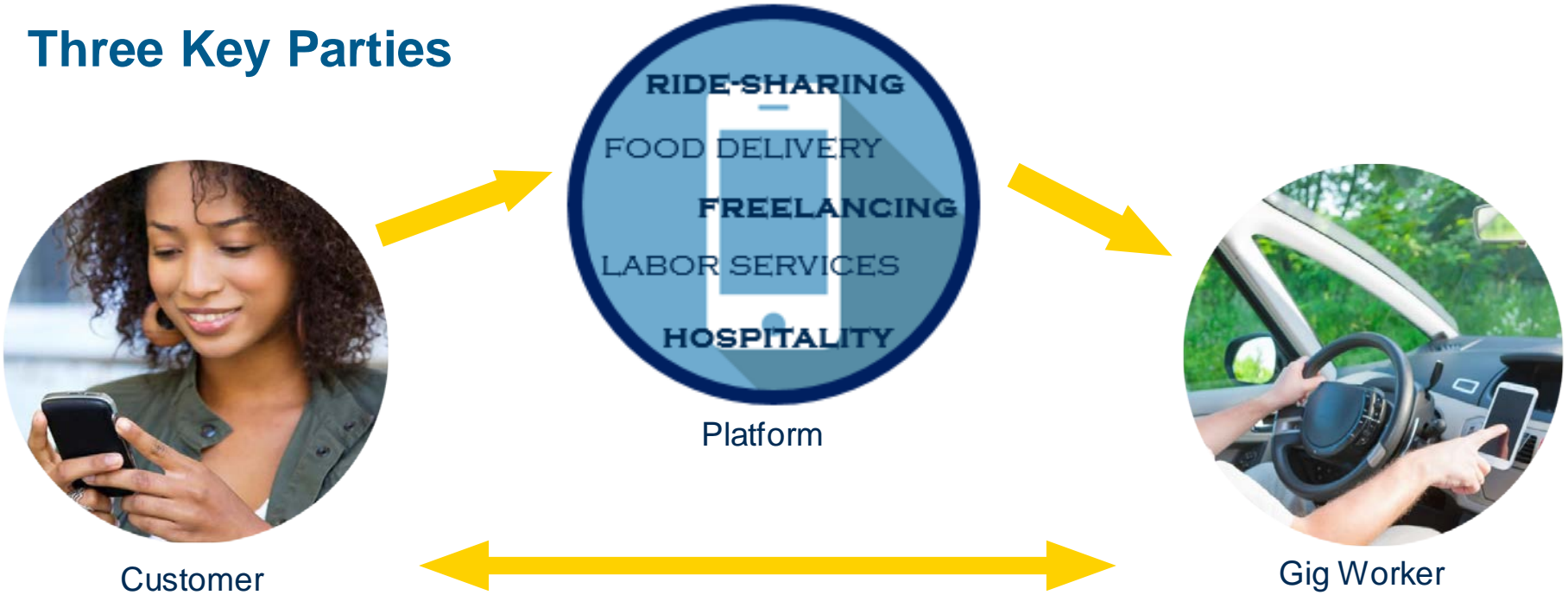
# Gig Economy – FTB's Perspective

## 2017 Research Study

- Primary Players
- Information available:
  - Educating Gig Workers
  - Understanding the Gig Economy
- Tax implications
- Opportunities for Education & Outreach

# Gig Economy – 2017 Research Study

## Three Key Parties



# Gig Economy – Reporting Requirements

## 1099-K Requirements:

– Annual Gross payments exceed \$20,000

**AND**

– More than 200 transactions in a calendar year

2018		<input type="checkbox"/> VOID	<input type="checkbox"/> CORRECTED	OMB No. 1545-2255	
FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		FILER'S TIN PAYEE'S TIN		<b>2018</b> Form 1099-K	
Check to indicate if FILER is a (and) Payment settlement entity (PSE) <input type="checkbox"/> Electronic Payment Facilitator (EPF)/Other third party <input type="checkbox"/>		Check to indicate if transactions reported are: Payment card <input type="checkbox"/> Third party network <input type="checkbox"/>		<b>Payment Card and Third Party Network Transactions</b>	
PAYEE'S name Street address (including apt. no.) City or town, state or province, country, and ZIP or foreign postal code PSE'S name and telephone number		1a Gross amount of payment card/third party network transactions \$ _____ 1b Card Not Present transactions \$ _____ 3 Number of payment transactions		2 Merchant category code \$ _____ 4 Federal income tax withheld \$ _____	
Account number (see instructions) and TIN rot. <input type="checkbox"/>		5a January \$ _____ 5b February \$ _____ 5c March \$ _____ 5d April \$ _____ 5e May \$ _____ 5f June \$ _____ 5g July \$ _____ 5h August \$ _____ 5i September \$ _____ 5j October \$ _____ 5k November \$ _____ 5l December \$ _____		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the 2018 General Instructions for Certain Information Returns.	
Form 1099-K <b>Do Not Cut or Separate Forms on This Page</b>		Cut No. 54116R www.irs.gov/Form1099K <b>Do Not Cut or Separate Forms on This Page</b>		Department of the Treasury Internal Revenue Service State income tax withheld \$ _____ \$ _____	

# Gig Economy – Reporting Requirements

## 1099-K Requirements:

– Annual Gross payments exceed \$20,000

**AND**

– More than 200 transactions in a calendar year

The image shows a 2018 Form 1099-K, titled "Payment Card and Third Party Network Transactions". The form is for the year 2018 and includes a yellow highlight around the checkboxes for reporting requirements. The highlighted area contains the following text and checkboxes:

Check to indicate if filer is a self-reported filer:	Check to indicate transactions reported as:
<input type="checkbox"/> Payment settlement entity (PSE)	<input type="checkbox"/> Payment card
<input type="checkbox"/> Electronic Payment Facilitator (EPF)/Other third party	<input type="checkbox"/> Third party network

The form also includes fields for FILER'S name, TIN, and address; PAYEE'S name, TIN, and address; and a table for monthly gross payment amounts. The bottom of the form contains the text: "Form 1099-K Do Not Cut or Separate Forms on This Page" and "Cut No. 54118B www.irs.gov/Form1099K Department of the Treasury - Internal Revenue Service Do Not Cut or Separate Forms on This Page".

# Gig Economy – Research

## Challenges for Gig Workers

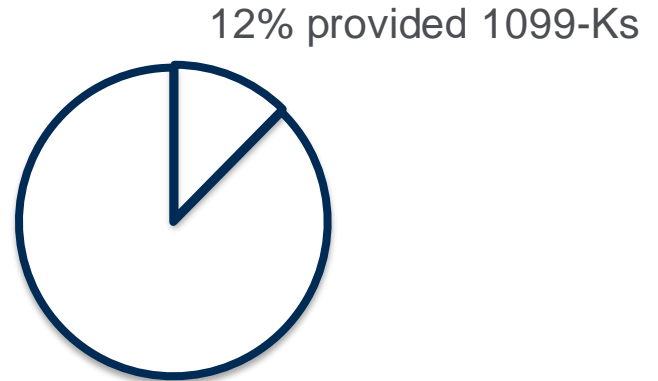
- 2016 Report “Shortchanged”
  - 68% did not receive a 1099-K or 1099-Misc
  - 34% unsure if they should make estimate payments
  - 47% unaware of deductions, expenses, credits to offset income
  - 43% were not prepared to pay their tax bill
  - 35% were unclear regarding records needed

Source: [Caroline Bruckner, Kogod Tax Policy Center](#)

# Gig Economy – Research

## Reporting of 100 Platforms in 2016

- 12% Provided 1099-Ks to Gig Workers
- Only half of the 12% issued more than 55 1099-Ks to gig workers



88% did not  
provide 1099-Ks

# Gig Economy – Research

TIGTA on 1099K Threshold:

Sample of 3 Gig Companies that provide 1099-K to 100% of Gig Workers  
Volumes and Gross Payments - at \$20K and \$600 thresholds

	Number of Forms 1099-K	Gross Payment Totals
Total Forms 1099-K Issued	2.4 Million	\$10.7 Billion
\$20,000 Reporting Threshold	130 Thousand	\$4.9 Billion
\$600 Reporting Threshold	1.5 Million	\$10.5 Billion

Source: TIGTA Report / February 2019

# Gig Economy – Compliance Challenges

## **Gig Workers May Not Know:**

- How much income they earned
- What income must be reported
- How to report gig income
- What expenses may offset gig income



# Gig Economy – Compliance Challenges

## IRS Study: More Information Increases Compliance

	<b>% Compliance Error Rate</b>
<b>Substantial Information Reporting Plus Withholding:</b>	1%
<b>Substantial Information Reporting</b>	7%
<b>Some Information Reporting</b>	19%
<b>No Information Reporting</b>	63%

*Source: Federal Tax Compliance Research - Tax Gap Estimates for Tax Years 2008–2010*

# Gig Economy – Education & Outreach

## Tax Practitioners/ Professionals

- Tax Attorneys
- Accountants/CPAs
- Enrolled Agents
- CTEC Registered Tax Preparers
- Organizations for Tax Professionals

## Small Business (SB)/ Industry Groups

- CDTFA sponsored Small Business Seminars
- IRS, SBA, Small Business Seminars

## Taxpayer Outreach

- Financial Literacy Events
- Elected Official Events

# Gig Economy – Education & Outreach

## FTB Outreach Efforts:

- Outreach
  - Need for more information has grown from general to more specific
  - Communication needs to be proactive as gig economy evolves
- FTB Website
- Tax News
- Social Media
- Created Video

# Gig Economy – Education & Outreach

## Gig Economy Web Page:

<https://www.ftb.ca.gov/file/business/industries/gig-economy.html>

The screenshot shows the California Franchise Tax Board (FTB) website page for the Gig Economy. The page is titled "Gig economy" and is categorized under "Industry". The navigation bar includes "File", "Pay", "Refund", and "Forms". The breadcrumb trail is "home / file / business / gig economy". The page content includes a "Business" breadcrumb, a "Gig economy" link, and a "Related Content" section with links to "Board meeting for gig economy", "Small businesses", "IRS Sharing Economy Tax Center", and "California Tax Service Center". The "Overview" section is titled "What is the gig economy?" and lists three types of gig economy activities: "rent a house", "provide car rides", and "connect and provide a number of other goods or services". It also states that "This is called the gig economy, also known as the shared, digital, or peer-to-peer economy. Gig economy activity is generally taxable." The "Is income from gig work taxable?" section is partially visible at the bottom.

CA.GOV Account Tax Pros Help

STATE OF CALIFORNIA Franchise Tax Board

File Pay Refund Forms

home / file / business / gig economy

## Gig economy

Industry

< Business

Gig economy

### Related Content

- Board meeting for gig economy
- Small businesses
- IRS Sharing Economy Tax Center
- California Tax Service Center

### Overview

#### What is the gig economy?

If you use any of the online platform applications available to:

- rent a house
- provide car rides
- connect and provide a number of other goods or services

This is called the gig economy, also known as the shared, digital, or peer-to-peer economy. Gig economy activity is generally taxable.

#### Is income from gig work taxable?

If you receive income from a gig economy activity, it's generally taxable, even if you don't receive a

# Gig Economy – Education & Outreach

## Tax News Web Page:

<https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/index.html>

The screenshot shows the California Franchise Tax Board (FTB) website. At the top, there is a navigation bar with 'CA.gov' on the left and 'Account', 'Tax Pros', 'Help', and a search icon on the right. Below this is a secondary navigation bar with 'File', 'Pay', 'Refund', and 'Forms'. The main content area has a breadcrumb trail: 'home / about ftb / newsroom / tax news'. The title 'Tax News' is prominently displayed, followed by 'September 2019'. On the left side, there is a sidebar with a 'Newsroom' section containing a 'Tax News' link. Below this is a 'Previous editions' section. The main content area features a 'Current edition' section with a download icon and the text 'Tax News September 2019 Edition (Print version)'. Below this, there are two links: 'Board meeting for gig economy' with a subtext 'We are hosting a Franchise Tax Board Meeting on Tuesday, October 1, 2019 to discuss the gig economy.', and 'Prepare now for new state minimum essential coverage individual health care mandate'.

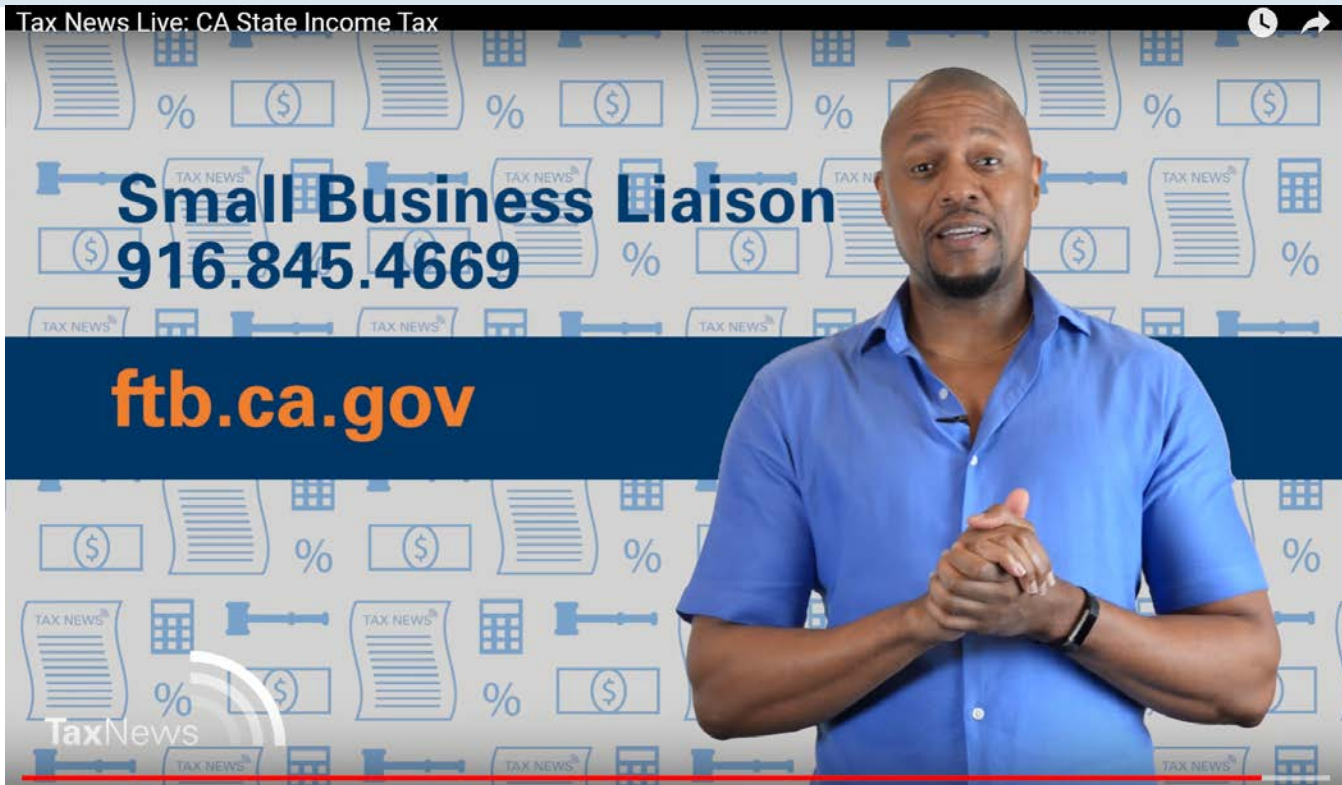


# Gig Economy – Education & Outreach

Tax News Live: CA State Income Tax

**Small Business Liaison**  
**916.845.4669**

**ftb.ca.gov**

A man in a blue short-sleeved button-down shirt is speaking, with his hands clasped in front of him. He is positioned in the center-right of the frame. The background is a light blue pattern of various tax-related icons, including dollar signs, percentages, and document symbols. Overlaid on the background is the text 'Small Business Liaison' and the phone number '916.845.4669'. Below this, a dark blue horizontal bar contains the website 'ftb.ca.gov' in orange text. At the top left of the video frame, the text 'Tax News Live: CA State Income Tax' is visible. The 'TaxNews' logo is also present in the bottom left corner of the video frame.

**Thank You!**