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

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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.
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

Customer

Platform

Gig Worker

RIDE-SHARING
FOOD DELIVERY
FREELANCING
LABOR SERVICES
HOSPITALITY
Gig Economy – Reporting Requirements

1099-K Requirements:

- Annual Gross payments exceed $20,000
- More than 200 transactions in a calendar year
1099-K Requirements:
- Annual Gross payments exceed $20,000
  AND
- More than 200 transactions in a calendar year
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

12% provided 1099-Ks
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

<table>
<thead>
<tr>
<th>Number of Forms 1099-K</th>
<th>Gross Payment Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Forms 1099-K Issued</td>
<td>2.4 Million</td>
</tr>
<tr>
<td>$20,000 Reporting Threshold</td>
<td>130 Thousand</td>
</tr>
<tr>
<td>$600 Reporting Threshold</td>
<td>1.5 Million</td>
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</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Information Reporting</th>
<th>% Compliance Error Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantial Information Reporting Plus Withholding</td>
<td>1%</td>
</tr>
<tr>
<td>Substantial Information Reporting</td>
<td>7%</td>
</tr>
<tr>
<td>Some Information Reporting</td>
<td>19%</td>
</tr>
<tr>
<td>No Information Reporting</td>
<td>63%</td>
</tr>
</tbody>
</table>

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
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
Web Page:
https://www.ftb.ca.gov/file/business/industries/gig-economy.html
Gig Economy – Education & Outreach

Tax News
Thank You!