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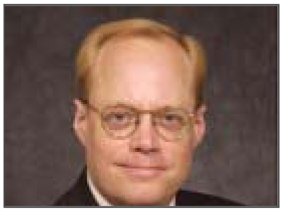

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Are On Demand Workers Independent Contractors In Name Only?

A report by the U.S. General Accounting Office says 40.4% of the U.S. workforce is made up of contingent workers without secure jobs. The government did some rounding but some of the findings are shocking, especially from the U.S. government:

- Agency temps (1.3%)
- On-call workers (people called to work when needed) (3.5%)
- Contract company workers (3.0%)
- Independent contractors who provide a product or service and find their own customers (12.9%)
- Self-employed workers such as shop and restaurant owners, etc. (3.3%)
- Standard part-time workers (16.2%)

If you add up the on-call (3.5%), contract (3%), independent contractors (12.9%) and the self-employed (3.3%), you have a big group. There is considerable talk these days about the positives and negatives of Uber, Lyft, Sidecar, and many other so-called tech companies. They are part of the on-demand economy, relying on hordes of upstart workers. These companies rely on strong corporate branding but are quiet about the fact that each has an army of service providers that are not employees.

At least not on paper, and paper matters, even in our paperless world. There is a legal argument, however, that some of these people might *actually be* 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.

This is a problem we may not see exploding for quite some time. Tax filings are done in arears, and audits are often even further down the line, years ahead. These workers ostensibly work for themselves and that means they are proprietors.

They don't get a W-2, so 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 it 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 rely on the branding that uniformity can provide. However, they do not want all of the costs and liabilities of employees. Done carefully, such arrangements can be legitimate. However, some employers treat their 'independent contractors' as employees. That's 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.

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