

Cash Intensive Businesses Audit Techniques Guide - Chapter 17 - Taxicabs

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Taxicab Industry Defined

The taxicab industry provides passenger transportation. Taxicabs carry passengers for a fare calculated by a taximeter, which measures time and distance traveled. Potential passengers engage the service by hailing a cruising taxicab on the street, at a taxi stand or on a for-hire basis.

For-hire rides are those the passenger arranges for in advance with a taxicab operator who dispatches the passenger information to the driver via radio, cellular telephone or on-board computer. Depending on local jurisdiction, taxicabs may legally be able to both cruise/wait at taxi stands and operate as for-hire.

Per the latest figures released by the Taxi, Limousine & Paratransit Association, there are approximately 6,700 taxicab companies operating in the United States with 190,000 taxicabs in service. Over 80% of these taxicab companies have less than 50 vehicles placed in service. The latest figures from the United States Department of Labor, Bureau of Labor Statistics reports there were 232,300 taxicab/chauffeur drivers in 2008, of which 26% were self-employed.

Regulatory Environment of the Taxicab Industry

The taxicab industry is highly regulated by local government including any department of transportation or airport authority in the taxicab business service area. The appropriate political body or organization, such as the city, county or airport authority, issues the taxicab company a franchise to operate in their respective jurisdictions.

Other key responsibilities of the taxicab regulatory political body or organization are issuing taxicab driver permits, verifying correct licensing, certification of the taxicab franchise and setting the rate schedule.

Certification, licensing and permits

The taxicab franchise operator applies for a certificate, which verifies all franchise drivers are compliant with local requirements to safely carry passengers. Included in the application is information about the applicant, descriptions of the motor vehicles the applicant places in service, the color scheme or other distinguishing features of the exterior of the taxicabs, insurance information and a statement of financial status. Renewal of the certificate is normally on an annual basis.

Taxicab drivers must have a valid regular automobile driver's license. Many states require drivers also secure a chauffeur (hack) license.

Taxicab drivers considered independent contractors or business owners also secure the same type of business licensure required of any business setting up shop in the applicable city and county.

See the section later in this guide, "Employee VS independent contractor", for more information about this topic.

Depending on the service area, the taxicab operator/driver will most likely have to secure a taxicab driver's permit from local government or the department of transportation. In most municipalities, the chief of police or city manager issues the driver's permit, which allows for the operation of taxicab services within the permitting area. The number of permits allowable for a certain area may be finite and issued on a first-come first-serve basis.

Taxicab rate schedule

The taxicab regulatory political body or organization sets allowable rates usually making it unlawful for a taxicab operator to charge any amount greater than the established schedule or rates. Further, the taxicab drivers must post these rates and place the taximeter in a location within the taxicab that is clearly visible to the passenger.

Rates for taxicab services are most often broken down as follows:

- **Initial entry:** The flat fee charged to the passenger regardless of the distance traveled. This is also known as a 'meter drop' or a 'flag pull'.
- **Distance:** Usually measured in fractions of a mile, this is the additional fee for the actual mileage of the passenger ride.
- **Time:** Another charge that compensates the taxicab driver for being stuck in traffic. Usually measured in seconds of time, it is known as 'wait time'.
- **Additional passengers:** The taxicab driver may also charge for any additional passengers. Please note: many municipalities allow an exception for additional passengers that are under or over a certain age.
- **Miscellaneous additional fees:** The passenger fare may also include additional toll charges, luggage or dispatcher airport fees.

Determining the Applicable Rates and Fees

Discuss taxicab rate schedules during the initial interview. If the taxicab driver is compliant with the applicable taxicab authority, the driver should clearly post this information in the taxicab, allowing verification of initial interview responses during the tour of business.

Additionally, this information should be available online at the regulatory agency's website. Suggestions for key search phrases to find the applicable regulatory website are the following: taxicab authority, taxicab rules, department of transportation, board of taxicab commissions or department of airport, incorporating the local exam area into the key phrase. For example, "City of Los Angeles taxicab rules".

Sources of Taxicab Industry Information

Obviously, filed tax returns provide a wealth of information about the taxpayer. In addition, examiners have numerous other sources to gain information about the taxpayer. To follow are external and internal sources of information relevant to the taxicab industry.

External sources of information

Due to the regulatory environment in which this industry exists, there are numerous external sources of information:

- **Taxicab franchise certification:** As discussed in the above "Certification, licensing and permits" section, most regulatory agencies require the taxicab company apply for certification, which is renewed annually. Statements of operator financial status are requested as part of the regulatory certification process and can be one potential exam resource to verify gross receipts.
- **Permitting agency:** In order to maintain permits, many departments of transportation require the taxicab company file income statements with them to make sure the company is operating their cabs in a businesslike fashion. Use income statements the taxicab operator files to verify income per return.
- **Waybills:** Waybills are a daily record sheet for taxicab driver's trips and fares. Also known as trip sheets, waybills include the location and time of passenger entry, the number of passengers, passenger destination and the amount of fare collected. The taxicab driver prepares the waybill, forwarding the original to the taxicab company, keeping a copy for their records. Regulatory bodies normally require taxicab companies keep their waybills for a certain period, commonly ranging from twelve to eighteen months.
- **Registry/Department of Motor Vehicles (DMV):** Your state motor vehicle agency can provide a list of all vehicles the taxicab operator owns. The way to secure this information varies by state. Most states have a section on their DMV website explaining how to secure this information and contact telephone numbers to speak with personnel in the record request office. In addition to a listing of all vehicles registered to the individual or entity, vehicle lien holder or lessor information is also available. Often this information can lead to additional sources of taxicab company income or other bank accounts.
- **City license department:** Your local area business license department can provide a list of all taxicab drivers and the companies for which they work.

Internal sources of information

Use IRP transcripts to identify sources of income such as cash transactions, interest, dividends, rental income, and brokerage and real property transactions. This information provides bank and investment account information.

Trade and businesses report cash transactions over \$10,000 on Form 8300. Financial institutions file Form 4789 when cash is withdrawn or deposited in amounts greater than \$10,000. Cash

transactions and 1099-MISC information is especially relevant when reconciling IRP transcripts to income per return.

There are many research tools available on the IRS Intranet in the Research Center. Accurint, the LexisNexis locate-and-research tool, is a starting point. Tailor any further research to the particular circumstances surrounding the taxpayer.

Primary Audit Issues

While many taxicab drivers accept credit cards, it is still a very cash intensive business. Like many cash intensive businesses, taxi drivers may pay their business and personal expenses in cash prior to depositing the monies. For "self-employed" drivers, inadequate books and records and unreported gross receipts may be an issue during the examination as well as proper classification of workers. For the employee driver and their employer, unreported tips may be an issue along with all of the other technical and other issues that surface during the examination of a business entity.

Books and records

A formal set of books may not exist for self-employed drivers. Generally, self-employed drivers tend to keep detailed business expense records. Records to verify self-employment income may be more difficult to obtain. The following items reflect "books and records" for the taxicab industry by income and expense:

Income:

Typical income items for the taxicab industry consist of total fares collected, tips and lease income. The taxicab operator/driver may have other industry related income such as sale, exchange or disposal of equipment held for business use.

To follow is information about each of the income items mentioned above:

- **Total fares collected:** Total fares collected should agree with the taxicab company's waybills. If the waybills are sequentially numbered, query the taxicab operator about procedures for missing or voided waybills. Find out if the taxicab company examines, inspects or verifies the accuracy of the waybills the drivers submit.
- **Tips:** Taxicab drivers supplement their fares with tip income. As with many service industries, tips may be unreported or overlooked as income. For more information about determining a reasonably correct tip rate, see the section, "Determining tip income."
- **Lease income:** Taxicab owners/operators receive this income by leasing out their taxicabs to independent drivers.
- **Other:** If the taxicab company disposes of equipment, it may have a gain on the transaction. Depending on the operating area of the taxicab company, they may have sources of income in addition to the above.

Expenses

Two expenses especially relevant to the taxicab industry are vehicle repair and maintenance and fuel consumption. Both categories of expense have some association or can indirectly tie to actual miles driven, helping to substantiate or reconstruct income.

Use taxicab repair receipts to confirm the actual miles driven. If receipts lack odometer readings, the examiner can use the receipts to estimate mileage. For example, the driver has receipts indicating 10 oil changes during exam year and during the initial interview it is determined the driver changes the oil every 3000 miles. Actual mileage is estimated at 30,000 (10 oil changes times 3000 miles).

Fuel consumption should correspond to the number of miles the taxicab was actually driven. Using the vehicle's average miles per gallon of gas and the prevalent average gas price, the examiner can use fuel consumption to back into miles driven.

During examination, the taxpayer may claim fuel consumption is overstated. Verify this fact with odometer readings from repair receipts or from information the taxicab company files with the local Department of Transportation.

Tips

When a transportation company classifies its drivers as employees, the drivers should be reporting tip income to their employer by the 10th day of the following month, per IRC 6053(a). When a transportation company classifies its drivers as independent contractors, any monies the driver receives is gross receipts. A passenger will not be aware of the driver's status and will generally leave what they consider a tip either way.

Regardless of the classification of any money given to the driver above the fare, determining the amount of tips or additional gross receipts is challenging. The processes detailed below can be used for either situation, since what the examiner is trying to determine is the correct level of driver income. Once the level of unreported income (if any) is determined, the taxation and procedural processing of the corrections depend on the worker's correct classification.

Transportation companies treating drivers as employees can opt to participate in an IRS Voluntary Tip Agreement, such as the Tip Rate Determination Agreement (TRDA) or a Tip Reporting Alternative Commitment (TRAC). The examiner may not be aware that the transportation company has a tip agreement when he or she is assigned the case. The examiner can contact the National Tip Reporting Compliance Program (SB/SE Specialty Programs, Employment Tax Operations) to determine if the taxpayer is under an agreement or structure a question about tip agreements within the tip reporting section of the interview.

The tip agreement programs referred to above extend benefits to an employer willing to meet the responsibilities contained within the agreement. Both a TRDA and TRAC extend tip audit protection to the employer. As long as the agreement is still active, the IRS can not perform a tip audit at the employer level. Any other income or employment tax issues can be addressed, but

not unreported tip income. A TRDA also extends tip audit protection to the participating employees as long as they report tips at or above the established tip rate(s) detailed in the agreement. Employees who choose not to participate in the TRDA do not have audit protection. The IRS examiner may request employer records to determine a non-participating employee's unreported tips.

A TRAC agreement does not extend tip audit protection to the employees and the employer is responsible for any social security and Medicare tax on "mirror assessments" for unreported tips determined by the IRS at the employee level. The IRS must determine an individual's unreported tips via an individual examination before making a corresponding employer assessment under the authority of IRC 3121(q).¹ The corresponding assessment is known as a mirror assessment. The IRS examiner may request employer records to determine an employee's unreported tips.

Examiners should consult the Tip Reporting section of the Internal Revenue Manual, IRM 4.23.7 for additional information on tip examinations, tip agreements, and tip examination processing procedures. Examiners can also contact SB/SE Specialty Programs, Employment Tax Operations, National Tip Reporting Compliance Program and consult with one of the Program's Senior Analyst on issues involving tip reporting compliance or to obtain an electronic copy of the Tip Reporting Compliance Training.

Determining tip income

If the transportation company classifies its workers as employees, the employees should be reporting the tips they earn to their employer at least once each month. IRC 6053(a) requires that if any employee receives \$20.00 or more in tips in a calendar month, the employee must report such tip income to the employer by the 10th day of the following month. No particular form must be used in reporting tip income.

However, Treas. Reg. §31.6053-1(b) requires that the form used should be signed by the employee and disclose:

- The name, address, and social security number of the employee,
- The name and address of the employer,
- The period for which, and the date on which, the statement is furnished, and
- The total amount of tip income.

The examiner should request a monthly summary of the tips reported to the employer by each driver. Examiners will use the summary, the driver's trip sheets, and other documentation to determine the level of tip reporting compliance. It is difficult to determine an average tip rate that will be accurate for risk analysis compliance computations. The true tip rate depends on many factors including city, clientele, shift, type of vehicle driven, route boundaries, etc.

For example, a driver of a cab performing mainly airport runs scheduled in advance will generally not receive the same type of tips as a cabbie that works the night shift cruising in the city. Thus, the examiner should attempt to arrive at a company's average tip rate and then adjust the rate up or down for variables that will increase or reduce a driver's tips from the average.

Generally, the examiner will have to reconstruct tip income via an indirect method. There are several sources of information that can be used individually or collectively to accomplish the task. Many regulatory authorities are requiring transportation companies to install sophisticated meters that include Global Position System tracking devices and electronic settlement technology. The examiner can use the reports of this device to perform an analysis of factors relevant to customer's tipping behavior.

The examiner can perform additional analysis of drivers who report a higher percentage of their meter in tips and determine if their tip reporting is representative of the company's routes and clientele. The examiner can review the companies gross receipts that were settled via an electronic transaction (credit card, debit card, etc.) to obtain a better understanding of the company's clientele's tipping behaviors.

Although there are other ways to indirectly determine the amount of tips earned by an employer's employees, the IRS generally uses either the Tip per Product Method, or the McQuatters formula to arrive at the substantially correct amount.

When a company has electronic settlement transactions (referred to as "credit card" from hereon) receipts exceeding 5%, the McQuatters formula can be used to calculate any unreported tip income. The McQuatters formula uses gross receipts and credit card settlement transactions that contain a tip to calculate the overall amount of tips that should have been reported by employees.

Generally, the higher the percentage of credit card settlement transactions (volume of credit card transactions is more reliable than the dollars of the transactions) the more reliable the McQuatters formula. Detailed information on the mechanics of the McQuatters formula can be obtained via sources outside of this Guide. See *McQuatters v. Commissioner*, T.C. Memo 1973-240. Examiners may also refer to Employment Tax Combined Tip Gaming Course, Training 28136.

When a company has a low percentage of credit card receipts, the examiner should consider using a Tip per Product Method. The Tip per Product Method uses more subjective evidence, such as observation, oral testimony, published information, etc. to estimate what the tip per transaction is, regardless of the dollar amount of the transaction. In its simplest form, for a valet attendant, it would be tip per car; for a baggage handler, it would be tip per bag; for a cocktail server in a casino or bar where there is a high percentage of cash transactions, it would be tip per drink; for a cabbie or limo driver it would be tip per ride.

Obtain detailed information on the mechanics of the Tip per Product Method via sources outside of this Guide. Examiners should refer to Employment Tax Combined Tip Gaming Course, Training 28136.

At times, an examiner may need to create a hybrid method to compute tips. For instance, if the trip sheets show that a reasonable percentage of the longer (and therefore higher dollar) rides were paid via credit card and the shorter rides were paid by cash, the examiner may set a dollar cut-off for using the McQuatters formula versus the Tip per Product Method. An example would be: for any ride of less than \$10 the tip per ride would be \$1 and for any ride over \$10 the

McQuatters formula would be used. As in all indirect method examinations, the facts, circumstances, and available evidence should drive the examiner to use a methodology that produces the most reliable and defensible result.

Regardless of the method chosen, the examiner should strongly consider interviewing the drivers, dispatchers, and other company personnel to gather corroborating evidence that will support his or her mathematical computations. Indirect methods used to compute unreported tips require adjustments for items such as cash differential (what a credit card customer will leave as a tip versus a cash customer), route differential, shift differential, etc., and much of that information is best obtained via observation and oral testimony.

Examiners should consult the Tip Reporting section of the Internal Revenue Manual, IRM 4.23.7 .7.1 for additional information on performing employer tip examinations. Examiners can also contact SB/SE Specialty Programs, Employment Tax Operations, National Tip Reporting Compliance Program and consult with one of the Program’s Senior Analyst on issues involving tip reporting compliance or to obtain an electronic copy of the Tip Reporting Compliance Training.

Calculating unreported tips via credit card sampling

As is stated above, in many examinations, the examiner will decide the best method to determine tip reporting compliance is to use a sampling of credit cards receipts. Like any sampling technique, the examiner must create a sample that is representative of a normal period. If the taxicab drivers provide a single type of service such as cruising, select a sample of credit card slips, add tips per the slips and calculate the average tip percentage.

If the drivers provide different types of services such as dispatched pick-up and cruising, select a representative sample of credit card receipts from each in proportion to the contribution each service makes to the total gross receipts for the period and determine the average tip rate. Multiply the tip rate times the gross receipts and compare the result with the tips reported to gain a general understanding of the employees’ level of tip reporting compliance.

Caution: The reliability of this or any other sampling technique is subject to the relationships the sample has to the entire population. For example, if a transportation company’s gross receipts were comprised of 60% credit or debit card sales that included a tip, the technique used above would be more reliable than if the company’s gross receipts were comprised of 35% credit or debit card sales.

Regardless of the level of reliability, there are other factors that must be considered when determining unreported tip income via an indirect method. Factors such as the cash differential, shift differential, route differential, stiff factor, tip-outs to dispatchers, tip-outs to door personnel at establishments, and other items affect the tips that drivers must report. The examiner needs to consider these items and others before finalizing his or her computations. As always, the best way to gather the information necessary to perform an examination in this area is to gain a thorough understanding of the business.

Tips versus finder's fees

Recently, the National Tip Reporting Compliance Program became aware of a payment for services requiring information reporting that was incorrectly being labeled as a tip. Because tips received in connection with employment are not subject to information reporting on Form 1099, the taxpayers making those payments were not reporting the payments to the IRS.

The situation identified involves payments to drivers of taxicabs, limousines, tour buses, and other modes of transportation. The drivers are employees of companies engaged in the business of transporting passengers for a fare. The drivers pick up and transport passengers to their requested destinations. Typically, the driver collects the fares from the passenger. It is customary for the passenger to tip the driver an amount in addition to the fare for the transportation provided.

Some adult entertainment clubs, restaurants, nightclubs, and other service establishments have a practice of making payments to drivers who bring passengers to their establishments. Generally, the service establishment's personnel will not render payment to the driver until the passenger first pays a cover charge or otherwise indicates in some manner that they are patrons of the service establishment.

Payments are usually made in cash, although some establishments issue vouchers to the drivers that can be exchanged for cash at a later time. The amount of the cash or voucher payment may or may not bear any relationship to the transportation fare, may vary depending upon the number of patrons, and may be far greater than either the fare or the customary tip for the transportation.

In many situations, one or more passengers are transported from a hotel directly to a service establishment. In some cases, the driver may make agreements with certain hotel personnel so that when a guest wants to go to an establishment, the hotel personnel will summon the driver from the hotel's transportation queue and the driver will split the payment from the establishment with the hotel personnel. In some cases the passenger may not request a particular destination and the driver or hotel personnel will recommend an establishment that will pay the highest amount for delivering the passenger/patron. Many establishments advertise in local magazines, specifically targeted at drivers in the transportation industry, that they will pay a "referral fee" or "tip" or "incentive" for delivery of passengers/patrons.

Generally, the drivers are not separately reporting the payments to their employer as tips and the employers are not treating the payments as wages subject to employment taxes and required to be reported on Forms W-2. The absence of reporting on either Forms 1099 or Forms W-2 may result in some drivers not reporting the payments as income on their income tax returns.

Per a Program Manager Technical Advice (PMTA) received from TEGE Counsel dated 12-01-2010, under the facts and circumstances described, the payments are not tips received in the course of employment with the transportation company, but are for services separate and distinct from those the drivers perform for their employer and, if the payments equal or exceed \$600 in a calendar year, should be reported on Forms 1099 filed with the IRS by the service establishment and also issued to the service provider, the driver.

The facts and circumstances presented in the PMTA support the characterization that the payments at issue are for the drivers' separate and distinct service of referring patrons, influencing patrons, and delivering patrons to particular establishments, rather than merely transporting passengers as part of their duties for their employers. The fact that the payments from the establishments are generally contingent upon the "passenger" becoming a "patron," whether by entering the establishment, paying a cover charge, purchasing a ticket, meal, or other service is indicative that the payment is made for the separate service of delivering a patron rather than transporting a passenger.

The service establishment is not the recipient of the transportation service; it is the recipient of the delivery of a patron. Furthermore, the fact that drivers frequently recommend the passenger's destination, sometimes in collaboration with hotel personnel, in order to secure the payment from a particular establishment further strengthens the conclusion that the establishments are paying drivers for bringing them customers, a service separate and distinct from merely transporting passengers to the passenger's requested destination.

When examining service businesses, examiners need to probe for the existence of payments of this type which are usually paid in cash or by a voucher that can be converted to cash at a later date. Various techniques should be used to identify the existence and deducting of such payments in the service sectors where this practice is common.

When examining transportation companies, examiners need to determine if payments such as those referred to above are being received by drivers and how they are being accounted for. A review of drivers' trip sheets may help to establish if this is a common practice in the company's local area. Repeated runs to and from a small number of locations or a certain type of establishment may indicate these practices are ongoing. These practices are generally more predominant during the evening, night, and early morning shifts. If it is determined that employee drivers are receiving referral fees, the examiner needs to ensure the employees are not reporting the fees as tips to their employer.

The transportation company is not responsible for the employment taxes or withholding on these payments. The fees are generally self-employment income to the driver and subject to self-employment taxes. The examiner should also address the information reporting compliance by the payor and determine if there is a lack of compliance in the industry paying the fees and/or other industries within the geographic "zone" the examination is being conducted.

If an examiner encounters this issue, it is recommended the examiners contact the National Tip Reporting Compliance Program and consult with one of the Program's Senior Analysts. The examiner should review the Chief Counsel Advice Memo on the subject regarding Taxicab Payments (PDF).

Employee VS independent contractor

Taxicab drivers fall into three different categories of labor:

- **Employee:** The driver reports to the company, most often via waybills, and receives a W-2 at year-end. Commonly, drivers lease their vehicles from the taxicab company in return for a percentage of the fares that they collect.
- **Independent owner/operator:** The taxicab driver owns and operates the vehicle, independently arranges fares and personally pays for all business-related expenses. If the independent owner/operator has incorporated their business, they should also receive a W-2.
- **Lease driver:** The taxicab driver leases the cab and services or just services from the taxicab company, paying a fixed amount at regular intervals. Absent other control factors (see the "Checking worker classification" section below); the driver is not an employee and receives a 1099-MISC from the taxicab company at year-end.

Checking worker classification

Taxicab drivers treated by the taxicab company as independent contractors for tax purposes may actually be employees. Determine proper classification of drivers by considering the facts and circumstances of each case while applying the law and regulations.

Note to Examiner: If you have a potential employment tax issue or a worker reclassification issue, refer the issue to the Employment Tax Specialty Group to work. The discussion below is included to help you identify this issue in your case.

The following is a brief outline of the law regarding employment status and employment tax relief. It is important to note that either worker classification-independent contractor or employee -- can be valid.

The first step in any case involving worker classification is to consider Section 530 of the Revenue Act of 1978. An examiner must provide the taxpayer with a written notice of the provisions of Section 530 [Publication 1976](#) (PDF) when examining employment status issues. If the requirements of Section 530 are met, a business may be entitled to relief from federal employment tax obligations.² Section 530 terminates the business's employment tax liability, but not the worker's, employment tax liability, including any interest or penalties attributable to the liability for employment taxes.

See IRM 4.23.5 for more information and guidance on Section 530. If the business is eligible for section 530 relief, the examiner is to discontinue the examination with regard to the qualified occupation. This discontinuance means that the worker status has not been determined as to whether the occupation class is that of employee or independent contractor. See IRM 4.23.10.12.4.1(1).

In determining a worker's status, the primary inquiry is whether the worker is an independent contractor or an employee under the common law standard. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law of agency -- whether one party, the principal, is legally responsible for the acts or omissions of another party, the agent -- and depends on the principal's right to direct and control the agent.

Guidelines for determining a worker's employment status are found in three substantially similar sections of the Employment Tax Regulations: Sections 31.3121(d) -1, 31.3306(i) -1, and 34.3401(c) -1, relating to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding. The regulations provide that an employer-employee relationship exists when the business for which the services are performed has the right to direct and control the worker who performs the services.

This control refers not only to the result to be accomplished by the worker, but also to the means and details by which that result is accomplished. In other words, a worker is subject to the will and control of the business not only as to what work shall be done, but also how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed if the employer has the right to do so. To determine whether the control test is satisfied in a particular case, the facts and circumstances must be examined.

The Service looks at facts in the following categories when determining worker classification: behavioral control, financial control, and relationship of the parties. See the 20 common-law factors described in Revenue Ruling 87-41, 1987-1 C.B. 296, in the "Tax Law, Regulations, Court Cases, and Other Authorities" section at the end of this guide.

Behavioral Control: Facts that substantiate the right to direct or control the details and means by which the worker performs the required services are considered under behavioral control. This includes factors such as training and instructions provided by the business. However, virtually every business will impose on workers, whether independent contractors or employees, some form of instruction (for example, requiring that the job be performed within specified time frames). This fact alone is not sufficient evidence to determine the worker's status. The weight of "instructions" in any case depends on the degree to which instructions apply to how the job gets done rather than to the end result.

The degree of instruction depends on the scope of instructions, the extent to which the business retains the right to control the worker's compliance with the instructions, and the effect on the worker in the event of noncompliance. The more detailed the instructions that the worker is required to follow, the more control the business exercises over the worker, and the more likely

the business retains the right to control the methods by which the worker performs the work. The absence of detail in instructions reflects less control.

Financial Control: Economic aspects of a relationship between the parties illustrate who has financial control of those activities. The items that usually need to be explored include:

- whether the worker has a significant investment,
- whether the worker has unreimbursed expenses,
- whether the worker's services are available to the relevant market,
- whether the worker is paid by the hour as opposed to a flat fee for the services performed, and
- whether the worker has the opportunity for profit or loss.

The first four items are not only important in their own right but also affect whether there is an opportunity for the realization of profit or loss. All of these can be thought of as bearing on the issue of whether the recipient has the right to direct and control the means and details of the business aspects of how the worker performs the services.

The ability to realize a profit or incur a loss is probably the strongest evidence that a worker controls the business aspects of the services rendered. If the worker is making decisions which affect his or her bottom line, the worker likely has the ability to realize a profit or loss.

Relationship of the Parties: The relationship of the parties is important because it reflects the parties' intent concerning control. Courts often look to the intent of the parties, which is most often embodied in contractual relationships. A written agreement describing the worker as an independent contractor is viewed as evidence of the parties' intent that a worker is an independent contractor. However, a contractual designation, in and of itself, is not sufficient evidence to determine worker status. The facts and circumstances under which a worker performs services are determinative of a worker's status. The designation or description of the parties is immaterial. The substance of the relationship governs the worker's status, not the label.

For an in-depth discussion, refer to [Internal Revenue Manual 4.23.5](#), Technical Guidelines for Employment Tax Issues, which includes the Section 530 determination, and [related exhibits](#), and Rev. Proc. 85-18, 1985-1 C.B. 518. [Publication 15A, Employer's Supplemental Tax Guide](#), is an additional resource.

The "right-to-control" test is the crucial test to determine the nature of the working relationship. The degree of control is one of great importance, though not exclusive. Accordingly, we must examine not only the control exercised by an alleged employer, but also the degree to which an alleged employer may intervene to impose control. In order for an employer to retain the requisite control over the details of an employee's work, the employer need not stand over the employee and direct every move made by that employee. Also, the degree of control necessary to find employee status varies according to the nature of the services provided.

For the taxicab industry, evidence of an employer/employee relationship comes down to control and the relationship between the company and driver. For example, requiring the driver maintain

a company dress code is evidence of control. During the initial interview, the examiner should gain an understanding of the way a company operates rather than simply try to verify the presence or absence of common law factors. Focus on what the business does and how the job gets done. It is also important to understand the relationship between the employer and its clients and customers.

The following items are just a few other examples of other taxicab industry factors indicating control:

- The drivers depend on the dispatcher for customers.
- Drivers are paid according to the number and distance of fares carried rather than setting their own rates.
- The taxicab company's name is on the vehicle.
- The driver does not advertise their own services.
- The taxicab company dictates when drivers can take breaks.

Careful consideration should be given to the determination of worker status when there is a lease arrangement between the company and the driver. See the rulings listed at the end of this guide for further discussion.

If the examiner feels proper classification is an issue, very early in the examination discuss with the taxpayer why they are treating drivers as independent contractors. Also consider if the taxicab company establishes a reasonable basis for not treating the drivers as employees, sufficient to satisfy section 530 relief. Close scrutiny should be given in cases where both Forms W-2 and 1099 are issued to the same driver.

Audit Techniques

Audit techniques vary somewhat if the examination involves a taxicab company or taxicab driver. Taxicab companies have reporting requirements to various political bodies or organizations (see the "Regulatory Environment of the Taxicab Industry" section of this guide). Examiners can tailor audit techniques to reconcile with local reporting requirements. Should drivers lack adequate records, use an indirect method to reconstruct income, or gross receipts.

Taxicab companies

In addition to bank statement analysis, use financial data the company files with local political bodies or organizations to verify gross receipts per return. Additionally, taxicab companies will normally provide a statement of financial status yearly to renew their certification with the local political bodies or organizations.

Reconcile waybills to any income statements/statement of financial status the company files with regulatory agencies. The examiner should keep in mind that income statements/statements of financial status the company provides to regulatory agencies are most likely not audited and are

only used to show the company is providing a needed service. Therefore, they may be overstated to impress the regulatory agency.

Query the taxpayer regarding any variance, reconcile and adjust if necessary.

Taxicab owners/operators

In addition to fare income, lease income is a prevalent source of unreported income for taxicab owners/operators. Verify the number of lease drivers and the amount of lease income with income statements the owner/operator files with the permitting agency.

Another method for identifying unreported lease income, the permitting agency may require the owner/operator pay worker's compensation for the leased drivers. Finally, if the taxicab companies are self-insured, they must keep records of the lease drivers. Bank statements may also indicate periodic lease payments as deposited items.

Compare lease income financial data the taxicab company reports to regulatory agencies with the amount shown per return. Check insurance records and perform bank statement analysis. Query the taxpayer regarding any variance, reconcile and adjust if necessary.

Taxicab drivers

Taxicab drivers may receive a W-2, a 1099-MISC or in the case of an independent owner/operator no external reporting form. Lease drivers should receive a 1099-MISC from the owner/operator. However, non-compliance with these reporting requirements on the part of the owner/operator is prevalent.

Lacking adequate records, the examiner can use the "cab formula" to reconstruct income or gross receipts. *See e.g. Salami v. Comm'r*, 74 TCM 236, TC Memo. 1997-347. This formula was developed during the IRS program involving taxicab drivers that looked at 1987 to 1989 returns in the Los Angeles, CA district. Tailored to the taxpayer, it remains a reasonable method for reconstruction. See the "Tax Law, Regulations, Court Cases, and Other Authorities" section of this guide for more information.

Using the taxi formula (a.k.a. the "cab formula")

The examiner's first step is to calculate the amount the driver earns for entry. *See* Market Segment Specialization Program Guideline, TAXICABS, Exhibit C, 1993 WL 13156510. Annualize the driver's approximate number of trips per year by multiplying the average number of customers per day by the number of days per year the driver works. Multiply this figure by the driver's entry rate to get the total earned entry amount. Many times this data can be obtained from the transportation regulatory agency. In addition, many of the regulatory agencies include an average number of trips per shift and revenue by shift.

The second step is to figure business miles driven. Divide total fuel expense by average cost per gallon to get number of gallons used. Multiply number of gallons used by the vehicle miles per gallon to get total miles driven. Deduct non-business miles to get total business miles.

The third step calculates total gross receipts:

- Multiply total business miles by the rate the driver charges per mile
- Add the total earned entry amount
- Add tips and lease income
- Add any other income such as wait time

Subtract gross receipts per return from total gross receipts to figure unreported income.

Taxi formula example

During the initial interview, the examiner determines the driver on average has 10 customers a day and during exam year worked 225 days. Exam year entry rate is \$2.50; per mile taxi rate is \$1.35. Average tip rate is 15.75%.

Fuel receipts total \$8,400, the driver's vehicle gets on average 12 miles per gallon and the prevailing fuel cost per gallon during exam year is \$3.87. Driver states business use is 75%. Driver leases the vehicle to another driver on off-days for \$10,000.

Step 1: Amount earned for entry

Number of customers per day	10
Days worked per year	225
Approximate trips per year (10 multiplied by 225)	2,250
Entry rate	\$2.50
Total earned entry amount (\$2.50 multiplied by 2250)	\$5,625

Step 2: Business miles driven

Total spent for gas	\$8,400
Cost per gallon	\$3.87
Number of gallons used (\$8,400 divided by \$3.87)	2,171
Miles per gallon	12
Total miles driven (2,171 multiplied by 12)	26,052
Non-business miles (26,052 multiplied by 25%)	6,513
Total business miles (26,052 minus 6,513)	19,539

Step 3: Gross receipts and unreported income

Total business miles from Step 2	19,539
Per mile taxi rate	\$1,35
Taxi fares based on miles (19,539 multiplied by \$1.35)	\$26,378
Total earned entry amount from Step 1	\$ 5,625
Total fares and entry amount (\$26,378 + \$5,625)	\$ 32,003
Tips (\$32,003 multiplied by 15.75%)	\$5,040
Lease rental income	\$ 10,000
Total gross receipts (\$32,003 + \$5,040 + \$10,000)	\$ 47,043
Less gross receipts per return	\$ 38,000
Unreported income (\$47,043 - \$38,000)	\$ 9,043

Initial Interview and Information Document Request

Tailor the initial interview questions and the initial information document request to each taxpayer to address the unique facts and circumstances of each taxpayer's business situation. Document the taxpayer's responses to initial interview and any required follow-up questions before reviewing taxpayer records.

The following is a summary of taxicab industry examination considerations. Tailor these items using taxpayer information gleaned during initial contact while considering the taxpayer's business arrangement: taxicab company, taxicab driver or lease driver.

Background

This industry is typically cash driven with poor recordkeeping. If the taxpayer appears to have assets brought from abroad, request copies of any forms filed with the Immigration Department to substantiate these as cash sources.

Operations

Learn if the cab company owns the taxis with the driver paying a rental fee for the use of the cab. If this is the arrangement, the rental fee may also include property damage insurance. If the driver owns the cab, find out what types of fees they pay to the taxicab company. Most owner/operators driving under another company's permit will pay a dispatch and insurance fee.

Query the taxpayer as to the method of taxicab operation: airport versus city or hotels. Does the driver cruise and do taxi-stand pickups versus for-hire transportation or both? Find out in what cities the driver has licenses to operate and the number of years the taxpayer has been a taxicab driver or owner/operator

Ask the taxpayer the number of days worked, the number of customers per day, the amount earned for entry, wait time and per mile. Find out the number of non-paid miles the driver travels.

It is reasonable to consider that the taxicab is not passenger occupied 100% of the time. However, realize that drivers work with their company's dispatcher to attempt to have another fare ready in the near vicinity after completing a drop-off.

Does the driver have flat rate trips? For example, does the driver provide transportation between the airport and downtown or any area attractions?

Find out the year and make of vehicle, the date purchased, miles per gallon of gas, ending and beginning odometer readings, total business miles and total commuting miles. Inquire about parking fees, airport surcharges, dispatch fees and tolls. Who pays for them, the passenger or taxicab driver?

Consider proper classification of labor. Determine if drivers who are actually employees are being classified as independent contractors.

Books and records

Suggestions for books and records to request for the examination are:

- Waybills
- Bank statements
- Financial statements filed with regulatory agencies
- Expense receipts: fuel, repair and maintenance, worker's compensation and other insurance payments, licensing, interest, detailing, lease payments
- Insurance settlements: secure a copy of the cancelled check and settlement statement
- Purchase, sale and loan agreements
- Lease driver agreements
- Form 1099-MISC issued by the company
- Number of taxicabs owned and history of accidents
- Franchise fee information

Examining tax returns

Suggestions for using books, records, internal and external sources for examination purposes:

- Reconcile waybills with any filed income statement or statements of financial status.

- Compare filed financial statements to taxpayer per return assertions looking for unreported income.
- Check with the local Department of Motor Vehicles for the number of taxicabs owned and history of accidents.
- Perform bank deposit analysis investigating sources of deposits.
- Lacking adequate records, use facts gleaned from the initial interview to estimate unreported income using the taxi formula.
- Use receipts to substantiate major expenses or any other classified issues. Keep in mind that worker's compensation payments will indicate the owner/operator has lease drivers.
- Consider if the taxpayer has unreported lease driver income.

Glossary of Taxicab Terms

The following are terms unique to the taxicab industry. Also see the "Taxicab rate schedule" and "External sources of information" sections of this guide for more terms and definitions.

- **Driver/Operator:** The individual person who is the member of the grantee driving, controlling and managing the taxicabs per the franchise or other agreement.
- **Grantee or Company or Franchise:** The person or organization holding the taxicab vehicle permit, operating permit or franchise.
- **Lease driver:** A person who is an independent contractor possessing a valid permit to operate a taxicab pursuant to an agreement with the taxicab operator or permittee.
- **On duty:** The start and end time of the driver's shift.
- **Standby:** The time the taxicab driver waits, at the passenger's request, with the taximeter engaged.
- **Taxicab driver:** Any person in possession of a valid permit to provide transportation services.
- **Taxicab medallion:** A type of property, which the local regulatory agency issues to taxicab owners, allowing them to operate taxicabs, at the exclusion of others.
- **Taxicab meter/taximeter:** Mechanical or electronic device used to register the fare to be charged to the passenger.
- **Taxicab stand:** An area of private property designated by the owner of such property for parking taxicabs while waiting for passengers.
- **Taxicab zone:** The curb parking area on a city street designated for the standing or parking of taxicabs while waiting for passengers.
- **Trip report/waybill:** Written report showing the details of each passenger fare. Usually required by city police departments for law enforcement purposes.

These two additional glossary entries are for businesses that while similar, are not considered part of the taxicab industry:

- **Limousine industry:** Vehicles carrying passengers door-to-door for a fixed fare usually set by the customer contacting and pre-arranging a pick up through a licensed service. The fleet vehicles in this segment of the industry include executive sedans, limousines and SUVs of varying lengths and luxury buses and vans.

- **Paratransit contracting industry:** Usually consisting of vans and minibuses, this transportation service provides rides under contract for public or non-profit agencies. The contracting can be fixed-route or on-demand. Most true paratransit services are subsidized with a de minimis additional fee to the rider.

Tax Law, Regulations, Court Cases, and Other Authorities

The following are suggestions for guidance while developing and documenting issues for taxpayers in the taxicab industry.

Internal Revenue Code:

Section 197 amortization of goodwill and certain other intangibles: Section 197 intangibles include any license, permit, or other right granted by a governmental unit even if the right is granted for an indefinite period or is reasonably expected to be renewed for an indefinite period. These rights include, for example, a taxicab medallion (or license).

Section 197 intangibles include any franchise, trademark, or trade name. The term *franchise* has the meaning given in section 1253(b)(1) and includes any agreement that provides one of the parties to the agreement with the right to distribute, sell, or provide goods, services, or facilities, within a specified area.

Revenue rulings/procedures

Revenue Ruling 71-572, 1971-2 C.B. 347. Taxi drivers who lease their vehicles from a taxicab company in return for a percentage of the fares they collect are to be regarded as employees of the company. However, absent other "control" factors, owner/operators who lease the company's services and drivers who lease both the vehicles and the company's service for a fixed amount at regular intervals are not company employees. Their earnings are subject to self-employment tax and related estimated tax payments.

Revenue Procedure 2010-51, 2010-51 I.R.B. 883. Removed the limitation on the use of the standard mileage rate for "automobiles used for hire, such as taxicabs" effective 1-1-2011. The change is not retroactive. Revenue Procedures applicable to previous years prohibited the use of the standard mileage rate for automobiles used for hire, requiring these taxpayers to use actual costs.

Revenue Ruling 71-571, 1971-2 CB 347. Held that Taxicab drivers operating vehicles purchased from a taxicab association under conditional sales agreements requiring specified daily payments, but giving the association no right to control their operations, are not employees of the association.

- Cab drivers who purchase their cabs from a taxicab association under conditional sales agreements requiring specified daily payments, but who give the association no right to control their operations, are not its employees.
- Where cab drivers lease their cabs from a company in exchange for a percentage of fares and are required to submit financial reports, the drivers are employees. But where the drivers either own their own cabs or lease the company's cabs in exchange for a fixed fee (no financial reports required), the requisite control is not present, and they are not employees.
- Taxicab drivers operating vehicles purchased from a taxicab association under conditional sales agreements requiring specified daily payments, but giving the association no right to control their operations, are not employees of the association.
- Whether taxicab drivers operating vehicles under a "lease" agreement with a taxicab company are employees of the company is dependent upon controls exercisable by the company that are not economically beneficial to the lessee's interest.

Revenue Ruling 87-41, 1987-1 C.B. 296, discussing twenty common-law factors considered in determining whether a worker is an employee or independent contractor.

1. INSTRUCTIONS regarding when, where, and how a worker is to complete their tasks
2. TRAINING provided to the worker
3. INTEGRATION of worker's services into business operations
4. SERVICES RENDERED PERSONALLY by the worker
5. HIRING, SUPERVISING & PAYING ASSISTANTS if the persons for whom services are performed hire and pay assistants, that is indicative of an employer/employee relationship. If the worker hires, pays and supervises assistants, that is indicative of an independent contractor relationship.
6. CONTINUING RELATIONSHIP between worker and the persons for whom services are rendered. There may be a continuing relationship where work is performed at frequently occurring but irregular intervals.
7. SET HOURS OF WORK the persons for whom services are rendered establishes set hours for the worker
8. FULL TIME REQUIRED the worker must substantially devote their full time to the persons for whom services are rendered (impliedly limiting the worker's ability to work for others)
9. WORKING ON EMPLOYER'S PREMISES-especially if the work could be done elsewhere
10. ORDER OR SEQUENCE SET BY EMPLOYER the employer sets or dictates the sequence of work tasks performed. This can be shown if the employer retains the right to set the order or sequence of work tasks performed.
11. ORAL OR WRITTEN REPORTS required by employer
12. PAYMENT BY THE HOUR, WEEK OR MONTH
13. PAYMENT OF BUSINESS AND/OR TRAVEL EXPENSE by employer
14. FURNISHING OF TOOLS AND MATERIALS (employer furnishes significant tools & materials)

15. SIGNIFICANT INVESTMENT in facilities by worker that are not normally maintained by employees is indicative of an independent contractor. The lack of investment by the worker is indicative of an employer-employee relationship.
16. REALIZATION OF PROFIT OR LOSS a worker who can realize a gain or loss as a result of their services is generally an independent contractor, but a worker who cannot is generally an employee
17. WORKING FOR MORE THAN ONE FIRM AT A TIME
18. MAKING SERVICES AVAILABLE TO GENERAL PUBLIC
(on a regular and consistent basis)
19. RIGHT TO DISCHARGE by employer
20. RIGHT TO TERMINATE by worker without liability

Court cases

Salam v. Comm'r, 74 TCM 236, TC Memo. 1997-347, using the "cab formula" to determine that petitioner, a cab driver in Chicago, IL, had omitted income for the tax years in question.

- **Substantiation of expenses:** A taxicab driver failed to present any records to show that he was entitled to business expense deductions with respect to his taxicabs in excess of the amounts allowed by the IRS. Although the substantiation requirements [section 274(d)(4)] of individual expenses for listed property were inapplicable because taxicabs did not qualify as "passenger automobiles," the driver nonetheless failed to meet his burden of proof on the issue.
- **Reconstructing income:** The IRS properly used the "cab formula" (see the "Using the cab formula" section of this guide) to reconstruct the income of a taxicab driver who failed to maintain adequate records of his gross receipts and did not present any printouts from the taxi meters of his taxicabs as evidence of his method of calculating his gross receipts.
- **Substantial presence test:** Since the taxicab driver qualified as a U.S. resident, his net earnings from self-employment were not excludable from self-employment income.

N.R. Moreira v. Comm'r, 95 TCM 1403, TC Memo 2008-105: The taxi driver was not entitled to deduct certain claimed business expenses on Schedule C with respect to his business of driving a taxicab. The taxpayer did not maintain adequate records, logs, or receipts to substantiate his claimed deductions and the court declined to rely on his testimony, which was self-serving and inconsistent, regarding these deductions.

R. Wood Est. v. Comm'r, 50 TCM 1232, TC Memo 1985-517. Aff'd, CA-9 (unpublished opinion 7/28/87): The placement of restrictions upon taxicab permit holders, so as to limit their ability to sell or assign their permits, did not give rise to a deductible loss.

E.W. Speck v. Comm'r, 59 F3d 106 (9th Cir. 1995). Owners of a taxicab company could not use a motion to quash summonses to prohibit the IRS's use of circular letters in its investigation of a case of possible tax evasion. The circular letters were an informal means of inquiry, which could be used without requiring summons procedures to be followed. The taxpayers' assertion that all IRS inquiries had to be done through the summons process was misguided. There was no

specific statutory right to quash the circular letters because response to the letters was not mandatory and, therefore, the letters did not constitute summonses.

Bolenge v. U.S., 71 A.F.T.R.2d 93-3159 (DC Md. 1989). Where taxicabs were driven only 2% of the time for generating revenue and the rest of the time to transport the taxpayer from her home to a university 25 miles away where she was taking a class, the activity was not engaged in for profit.

W.R. Batt, Sr. v. Comm'r, 24 TCM 565, TC Memo 1965-104. On the evidence, and in the absence, of the taxpayer's records, the court determined that the earnings of an independent taxicab driver were in excess of the amounts reported. When a taxpayer fails to maintain records, necessitating income reconstruction by the Service under a formula, and the taxpayer takes the matter into litigation, courts view the Service's method of accounting to be presumptively correct.

Martin v. Wichita Cab Co., 170 P.2d 147 (Kan. 1946). Employer-employee relationship did not exist between a cab company and drivers who rented company-owned cars and were not accountable for fares collected.

Air Terminal Cab, Inc. v. U.S., 478 F.2d 575 (8th Cir. 1973). A taxicab company with general control over the manner and means that their drivers performed services which constituted an integral part of the company's business was the employer of such drivers for withholding purposes.

Howard's Yellow Cabs, Inc. v. U.S., 987 F. Supp. 469 (W.D.N.C. 1997). A taxicab company was entitled to relief from liability for past employment taxes under the safe harbor provisions of Section 530 of the Revenue Act of 1978 (P.L. 95-600). The company did not treat any of its drivers as employees during the relevant period. It filed all required tax returns consistent with its treatment of its drivers as independent contractors. Further, it was not required to file Forms 1099 because it did not make "payments" to its drivers. Finally, the company had a reasonable basis for treating its drivers as nonemployees in light of its reliance on industry practice, an independent contractor agreement and advice from its accountants, attorney, and a state (North Carolina) employment security commission.

G.J. Killoran, 709 F.2d 31 (9th Cir. 1983), *aff'g* TCM 1662, TC Memo 1981-659. Tips received by a cab driver were taxable income regardless of how state law may treat such payments. Tips are paid for services rendered and are not gifts.

Publications

Publication 531, Reporting Tip Income

Publication 1244, Employee's Daily Record of Tips and Report to Employer

Footnotes

¹ I.R.C. § 3121(q) permits the IRS to treat an employer as having paid tip income to an employee as remuneration for employment.

² Section 530 refers to section 530 of the Revenue Act of 1978, Pub. L. 95-600, 1978-3 (Vol. 1) C.B. 119, amended by section 9(d) of Pub. L. 96-167, 1980-1 C.B. 483 and section 1(a) of Pub. L. 96-541, 1980-2 C.B. 596. For examples of the application of Section 530, see Rev. Rul. 81-224, 1981-2 C.B. 197 and Rev. Rul. 87-41, which these guidelines subsequently discuss in more detail.