

Boston College Law School

## Digital Commons @ Boston College Law School

---

Boston College Law School Faculty Papers

---

10-1-2020

# The Importance of Qualitative Research Approaches to Gig Economy Taxation

Shu-Yi Oei

*Boston College Law School, shuyi.oei@bc.edu*

Diane M. Ring

*Boston College Law School, diane.ring@bc.edu*

Follow this and additional works at: <https://lawdigitalcommons.bc.edu/lspf>



Part of the [Labor and Employment Law Commons](#), [Legal Writing and Research Commons](#), [Taxation-Federal Commons](#), and the [Tax Law Commons](#)

---

### Recommended Citation

Shu-Yi Oei and Diane M. Ring. "The Importance of Qualitative Research Approaches to Gig Economy Taxation." *Beyond the Algorithm: Qualitative Insights for Gig Work Regulation* (2020): 82-102.

This Article is brought to you for free and open access by Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law School Faculty Papers by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact [nick.szydowski@bc.edu](mailto:nick.szydowski@bc.edu).

## The Importance of Qualitative Research Approaches to Gig Economy Taxation

*Shu-Yi Oei and Diane M. Ring*

As the United States tax system continues grappling with how to accurately and appropriately tax workers in the gig economy, it confronts a number of questions. For example, what relationships are included in the gig economy? How many workers and firms are involved, and is the number increasing or decreasing? What particular problems do these workers encounter when engaging with the tax system, and are these meaningfully different from the problems confronted by other taxpayers? Is there a prototypical gig worker, or would gig-specific tax reform or relief have to be tailored to different types of gig workers (e.g., contributors of labor as opposed to contributors of capital)? If there is a prototypical gig worker, what is that worker's profile, and is it shifting? Is independent contractor classification for gig workers appropriate, and is it desired by workers? Is the tax system affecting the labor-supply decisions of gig workers?

Many of these questions have proven difficult to answer due a lack of adequate information. But the answers are important because they will shape how and whether the tax system responds to the gig economy, including how it approaches business deductions, tax withholding, and income definitions, how and whether it utilizes safe harbors and de minimis exceptions, how it designs taxpayer forms and instructions, and how it allocates enforcement and taxpayer education resources. In addition, as we have discussed in previous work, the tax system's evolving responses to the gig sector will affect other legal areas such as employment law, labor law, and antitrust.<sup>1</sup> Thus, the question of how to obtain the data and information necessary to formulate sound tax and related policies for gig work is vital.<sup>2</sup> This chapter discusses

<sup>1</sup> Shu-Yi Oei, *The Trouble with Gig Talk: Choice of Narrative and the Worker Classification Fights*, 81 LAW & CONTEMP. PROBS. 107 (2018); Diane M. Ring, *Silos and First Movers in Sharing Economy Debates*, 13(1) LAW & ETHICS OF HUM. RTS. 61 (2019).

<sup>2</sup> See generally Emilie Jackson et al., *The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage* 10 (Office of Tax Analysis, Working Paper No. 114, 2017), available at [www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/WP-114.pdf](http://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/WP-114.pdf); Lawrence F. Katz & Alan B. Krueger, *Understanding Trends in Alternative Work Arrangements in the United States* (Nat'l Bureau of Econ. Research, Working Paper No. 25425, 2019), available at [www.nber.org/papers/w25425](http://www.nber.org/papers/w25425).

the limitations of quantitative empirical research on the gig economy and argues that incorporating more qualitative approaches will be essential in attaining a comprehensive understanding of the tax policy issues involved. Specifically, this chapter emphasizes that adoption of a diverse set of research approaches is crucial because the administrative tax return and labor survey data are insufficient and are shaped by prior decisions of gig economy firms and participants. Many questions remain that such quantitative data, by its very nature, cannot answer.

We use the term “gig economy” throughout our discussion to conform with the title of this volume. However, as we have noted in prior work and as we discuss further below, the “gig economy” terminology is contested and has been deliberately wielded to advance particular narratives regarding the sector and to secure favorable regulatory treatment.<sup>3</sup> In this chapter, we largely set the broader question of appropriateness of terminology aside, only flagging those debates where relevant to our analysis.

This chapter proceeds as follows. First, it identifies the key tax issues at stake in the gig economy, including tax administration, worker classification, and impact of taxation on workforce decisions. Second, it discusses two primary ways in which quantitative approaches do not adequately capture the full picture of the tax issues at stake. Quantitative gig data is not neutral, but is instead predetermined by regulatory and compliance decisions made by gig economy firms to date. These strategic decisions – which reflect moves made during the gig economy’s infancy combined with strategic shifts over time – have the capacity to affect and frame the design and findings of subsequent empirical research. For example, firms’ initial choice to classify workers as independent contractors and to issue Forms 1099-K forced workers receiving those forms to file Internal Revenue Service (IRS) Form 1040 Schedule C (Profit or Loss from Business).<sup>4</sup> This in turn means that tax researchers have to examine Schedule C to detect and to understand the tax behaviors of gig workers and firms. Moreover, firms’ decisions to issue Forms 1099-K to only some workers means that the tax return data pool that researchers are studying is likely under-inclusive, and may not capture workers earning smaller amounts.<sup>5</sup> In short, threshold choices by firms, workers, and government agencies affect the data we can gather and use, the questions we ask, and the conclusions we reach. In addition, the administrative tax return data and labor survey data upon which much quantitative

<sup>3</sup> Oei, *supra* note 1.

<sup>4</sup> DEP’T OF THE TREASURY, INTERNAL REVENUE SERV., 2019 SCHEDULE C AND INSTRUCTIONS FOR SCHEDULE C (2018), available at [www.irs.gov/forms-pubs/about-schedule-c-form-1040](http://www.irs.gov/forms-pubs/about-schedule-c-form-1040).

<sup>5</sup> For studies of taxpayers receiving Forms 1099, see Brett Collins et al., *Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns* (IRS Statistics of Income Division, Working Paper 2019), available at [www.irs.gov/pub/irs-soi/19rpgigworkreplacingtraditionalemployment.pdf](http://www.irs.gov/pub/irs-soi/19rpgigworkreplacingtraditionalemployment.pdf); Katherine Lim et al., *Independent Contractors in the U.S.: New Trends from 15 Years of Administrative Tax Data* (IRS Statistics of Income Division, Working Paper 2019), available at [www.irs.gov/pub/irs-soi/19rpincontractorinus.pdf](http://www.irs.gov/pub/irs-soi/19rpincontractorinus.pdf).

research relies are insufficient and limited in scope. Not every important tax policy question can be answered solely by looking at those data sources.

Third, this chapter details how qualitative research methods such as interviews and case studies can flesh out gaps in the quantitative data, can help interpret quantitative data, and can help answer questions that extend beyond the scope of quantitative data. For example, administrative tax return data alone does not reveal how workers grapple with tax compliance issues or how they find information and advice about tax compliance, nor does it tell us about worker attitudes toward tax compliance. As an example of the value that can be added using qualitative research methods, we discuss the findings of a research study we conducted that employed close content analysis of public Internet discussions among ridesharing drivers concerning taxes and tax obligations.<sup>6</sup> That study yielded insights into the key issues confronting forum participants and their behaviors, choices, and attitudes. These types of insights are difficult to glean from tax administrative data.

Of course, qualitative approaches have shortcomings as well. Care must be taken in using and interpreting all types of data regarding the gig economy. But employing a more diverse set of research approaches yields a demonstrably richer account of gig economy tax issues than that provided by quantitative tax administrative and labor survey data alone. This methodological observation regarding the limits of quantitative data extends beyond the study of gig economy taxation; it likely holds true for the study of the larger contingent workforce as well.

#### 4.1 KEY TAX ISSUES IN THE GIG ECONOMY AND THE NEED FOR EMPIRICAL RESEARCH

A decade after the gig economy first emerged, taxpayers and governments continue to face many questions about the appropriate taxation of this sector and how taxation relates to the broader legal and economic issues the sector presents. At present, policymakers confront three major issues in taxing the gig economy: (1) understanding the tax compliance behaviors of gig workers in order to encourage accurate compliance and make sure that compliance burdens are fair; (2) ensuring appropriate classification of gig economy workers (that is, whether they are appropriately classified as independent contractors or as employees); and (3) appreciating how the tax system interacts with workplace law and affects labor decisions in the gig economy. Effective and sensible responses to these issues will rely on a combination of information and policy analysis, hence the need for empirical research.

<sup>6</sup> Shu-Yi Oei & Diane M. Ring, *The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums*, 8 COLUM. J. TAX L. 56 (2017).

### 4.1.1 Tax Compliance and Administration

From the outset, the tax system has grappled with designing tax administration to ensure compliance by gig workers.<sup>7</sup> As a threshold matter, it is clear that, just like other workers, gig workers are subject to income taxation. However, it is not clear whether gig workers fully understand their tax compliance obligations or are preparing their taxes accurately. Recognizing this risk, the National Taxpayer Advocate<sup>8</sup> flagged the need for guidance for sharing economy workers as a Most Serious Problem confronting the tax system and encouraged the IRS to provide such guidance.<sup>9</sup>

The state of compliance among gig workers is intimately linked to compliance choices made by gig economy firms. For example, as we have detailed in previous work, firms such as Uber, Lyft, and Airbnb have taken inconsistent and shifting positions on which tax reporting forms to issue to workers and to whom to issue them. Several firms have chosen to issue a Form 1099-K only to workers engaging in over 200 rides or transactions and earning over \$20,000 annually.<sup>10</sup> Such a reporting position risks leaving much gig income unreported to the IRS, which is likely to result in underreporting of income on the worker side.<sup>11</sup> Thus, one outstanding policy question concerns whether the reporting rule should be changed to require more complete reporting of low-dollar transactions by firms to the IRS. Beyond its impact on third-party reporting practices, the reality that much gig work is lower-dollar, more sporadic, and more episodic than traditional work means that it may not make sense for gig workers to invest substantial time and resources in learning

<sup>7</sup> CAROLINE BRUCKNER, KOGOD TAX POL'Y CTR., AMERICAN UNIV., *SHORTCHANGED: THE TAX COMPLIANCE CHALLENGES OF SMALL BUSINESS OPERATORS DRIVING THE ON-DEMAND PLATFORM ECONOMY* (2016), available at [www.american.edu/kogod/research/upload/shortchanged.pdf](http://www.american.edu/kogod/research/upload/shortchanged.pdf).

<sup>8</sup> The Taxpayer Advocate Service is an independent office inside the IRS tasked with evaluating the impact of tax law, enforcement, and administration on taxpayers, and reporting its findings to Congress. See Taxpayer Advocate Service, *National Taxpayer Advocate Reports to Congress and Research*, INTERNAL REVENUE SERVICE (June 20, 2019), [www.irs.gov/advocate/reports-to-congress](http://www.irs.gov/advocate/reports-to-congress).

<sup>9</sup> 1 NAT'L TAXPAYER ADVOCATE, 2017 ANNUAL REPORT TO CONGRESS 165 (2017); see also Taxpayer Advocate Service, *National Taxpayer Advocate Blog: Caring about "Sharing" – The IRS Should Do More for Participants in the Gig Economy*, INTERNAL REVENUE SERVICE (Nov. 15, 2017), <https://taxpayeradvocate.irs.gov/news/nta-blog-caring-about-sharing-the-irs-should-do-more-for-participants-in-the-gig-economy?category=Tax%20News>; Taxpayer Advocate Service, *National Taxpayer Advocate Blog: Participants in the Sharing Economy Lack Adequate Guidance*, INTERNAL REVENUE SERVICE (Jun. 28, 2018), <https://taxpayeradvocate.irs.gov/news/nta-blog-participants-in-the-sharing-economy-lack-adequate-guidance-from-the-irs?category=Tax%20News>.

<sup>10</sup> Oei & Ring, *supra* note 6, at 64–65, 86–87 (discussing the changing positions of gig economy firms regarding Form 1099-K reporting); see also Shu-Yi Oei & Diane M. Ring, *Can Sharing Be Taxed?*, 93 WASH. U. L. REV. 989, 1032–41 (2016) (discussing Form 1099-K information reporting rules and their interpretation and the potential effects on firms' information reporting choices).

<sup>11</sup> For examples of literature exploring the link between information reporting to the IRS and tax compliance, see James Alm et al., *Do Individuals Comply on Income Not Reported by Their Employer?*, 37 PUB. FIN. REV. 120 (2009); Leandra Lederman, *Reducing Information Gaps to Reduce the Tax Gap: When Is Information Reporting Warranted?*, 78 FORDHAM L. REV. 1733 (2010); Susan Cleary Morse et al., *Cash Businesses and Tax Evasion*, 20 STAN. L. & POL'Y REV. 37 (2009).

extensive and complicated tax compliance rules.<sup>12</sup> In response, some observers have advocated for the introduction of special regimes applicable to gig workers, such as safe harbors and de minimis rules to alleviate compliance burdens.<sup>13</sup>

Documenting and assessing these tax compliance risks and proposed solutions requires data. For example, discerning the degree of tax compliance among gig workers requires information about the baseline number of gig workers, the income reporting positions of gig economy firms, and the corresponding income reporting positions of the workers. Determining whether reforms or special rules are needed for gig economy participants requires information about the size of the sector and the dollars at stake,<sup>14</sup> but it also requires information about the tax compliance issues confronting gig workers and how these differ from those faced by other populations. Some of this information can be gleaned from analyses of administrative tax return and labor survey data, but as detailed below in Section 4.2, the predetermined state of this data and its corresponding gaps require that additional empirical approaches be employed.

#### 4.1.2 Worker Classification

A pervasive gig economy issue confronting tax authorities is that of worker classification. Among gig economy firms, the dominant business model characterizes workers as independent contractors. This reporting choice has been the subject of much litigation by workers, predominantly on labor and employment law grounds.<sup>15</sup>

In the tax system, classification matters because employees and independent contractors (and the firms that engage them) are subject to different federal tax rules. A business that classifies its workers as independent contractors not only avoids labor and employment law obligations to provide assorted protections and benefits to the workers, it avoids responsibility for payroll taxes (Social Security, Medicare,

<sup>12</sup> See, e.g., Oei & Ring, *supra* note 6; Oei & Ring, *supra* note 10. For example, gig workers may find themselves only performing work in the sector briefly or sporadically. In contrast, traditional small businesses run by individuals are likely to be longer-lasting.

<sup>13</sup> See, e.g., Kathleen D. Thomas, *Taxing the Gig Economy*, 166 U. PA. L. REV. 1415 (2018) (proposing “non-employee withholding” and a “standard business deduction” for gig workers); see also NEW GIG Act of 2017, H.R. 4165, 115th Cong. (2017); NEW GIG Act of 2017, S. 1549, 115th Cong. (2017) (proposing a safe harbor for independent contractor treatment; proposing changes to Form 1099-K reporting).

<sup>14</sup> See generally Andrei Haigiu & Julian Wright, *The Status of Workers and Platforms in the Sharing Economy*, 28 J. ECON. & MGMT. STRATEGY 97 (2019) (deploying a formal economic model to evaluate how worker classification decisions can be detrimental to both businesses and workers).

<sup>15</sup> See, e.g., Order Granting Plaintiffs’ Motion for Final Approval and Plaintiffs’ Motion for Attorneys’ Fees, O’Connor et al., v. Uber Technologies, Inc. et al., Case No. 13-cv-03826-EMC, Docket Nos. 945, 935 (N.D. Cal., Sept. 13, 2019) (final settlement approved in two cases against Uber regarding worker classification). In September 2019, Uber was sued in a California class action for violating the state’s newly enacted worker classification law set to take effect in 2020. *McRay v. Uber*, Case No. 4:19-cv-05723-DMR (N.D. Cal., Sept. 11, 2019).

and unemployment)<sup>16</sup> and for tax withholding.<sup>17</sup> On the worker side, those classified as independent contractors report income on Schedule C, are responsible for paying quarterly estimated income taxes and self-employment (Social Security and Medicare) taxes, and (because they are not subject to employer withholding) are responsible for managing their budgets to ensure they can pay these taxes.<sup>18</sup> Collectively, these compliance burdens are generally heavier than those borne by employees. On the flip side, independent contractor/self-employed filers are allowed more generous tax deductions than employees. Furthermore, the 2017 Tax Act arguably introduced some additional tax changes tilting in favor of independent contractor classification, enacting the new Internal Revenue Code (IRC) § 199A 20 percent pass-through deduction and suspending the deduction for employee business expenses in § 67. New § 199A is only available to independent contractors and not employees.

These worker classification issues raise important ongoing questions for the tax system. As an initial matter, are gig workers being appropriately classified under the law? Do existing rules for taxing independent contractors work well when applied to “microbusiness” gig economy workers? Are gig workers aware of new IRC § 199A and if so, has that new provision, together with the suspension of § 67 miscellaneous itemized deductions for employees, affected worker attitudes toward classification and profitability of the work? To the extent tax reform has tilted the balance of tax incentives toward independent contractor classification, it may have introduced a tool by which firms can nudge workers to accept that status, particularly if the costs of being an independent contractor (such as more limited workplace legal protections and benefits at the state and federal level) are not as salient as the more immediately observable tax benefits (e.g., a new 20 percent tax deduction under § 199A).<sup>19</sup> Beyond these impacts, the tax classification of workers may have implications for labor and employment law worker classification outcomes as well.

All these questions require empirical analysis,<sup>20</sup> but only some can be answered by looking at tax administrative data. Nuanced questions such as how workers feel

<sup>16</sup> Federal Insurance Contribution Act of 1935, 26 U.S.C. ch. 21, § 3101 et seq; Federal Unemployment Tax Act, 26 U.S.C. ch. 23, § 3301 et seq.; see also Shu-Yi Oei & Diane M. Ring, *Tax Law's Workplace Shift*, 100 B.U. L. REV. 651 (2020).

<sup>17</sup> See Internal Revenue Code (IRC), 26 U.S.C. §§ 3401, 3402, 3501 et seq.; *id.* §§ 6401, 6050W; see also U.S. DEPT OF TREASURY, INTERNAL REVENUE SERV., Publ'n No. 15, CAT. NO. 10000W (CIRCULAR E), EMPLOYER'S TAX GUIDE (2018) available at [www.irs.gov/pub/irs-pdf/p15.pdf](http://www.irs.gov/pub/irs-pdf/p15.pdf).

<sup>18</sup> I.R.C. § 1401(a), (b); I.R.C. § 164(f)(1). By contrast, for employees, the employer must deposit and report payroll taxes and is nominally responsible for half of Social Security and Medicare taxes. I.R.S. Publ'n No. 15, *supra* note 17. That is, the employer must not only withhold half those taxes from employee wages but must also pay the employer matching portion.

<sup>19</sup> See Oei & Ring, *supra* note 16.

<sup>20</sup> See, e.g., Gad Allon et al., *The Impact of Behavioral and Economic Drivers on Gig Economy Workers* (Oct. 29, 2018) (unpublished manuscript), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3274628](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3274628) (developing an econometric model of workers' labor decisions by conducting experiments on their financial incentives, in collaboration with a ridesharing firm).

about independent contractor tax issues, how they acquire information necessary to comply with their tax obligations, and how they learn about new laws (and adjust their work and tax compliance behaviors accordingly) are all questions that require different research approaches.

#### 4.1.3 *Tax, Labor Choices, and the Future of Work*

A third set of policy issues concerns how taxation of the gig economy and the independent contractor workforce more generally may drive changes in the nature of work at a micro and macro level. At a micro level, the primary question is how taxation affects decisions to do gig economy work. At a more macro level, the question is how tax policies may affect the shape and future of the workforce, for example, by encouraging the growth of independent contractor or contingent work (either in replacement of traditional employment or as a supplement to it). Empirical studies are important in answering these types of questions. As we have mapped in recent work,<sup>21</sup> tax administrative and labor survey data begin to offer insights into the size and composition of the independent contractor and contingent workforce, and such data is being analyzed by government and academic researchers.<sup>22</sup> The data matters because it might tell us how big the independent contractor/contingent workforce really is, whether and how it is growing or changing, how it relates to traditional employment relationships, and whether we ought to be concerned about the changing nature of work. However, it is not clear that the existing sources of tax administrative and labor survey data are up to the task of delineating how the tax system may be shaping these work choices and trends.

<sup>21</sup> See Oei & Ring, *supra* note 16.

<sup>22</sup> Jackson et al., *supra* note 2; BUREAU OF LABOR STATISTICS, ECONOMIC NEWS RELEASE: CONTINGENT AND ALTERNATIVE EMPLOYMENT ARRANGEMENTS SUMMARY (June 7, 2018), [hereinafter BLS Study] [www.bls.gov/news.release/conemp.nro.htm](http://www.bls.gov/news.release/conemp.nro.htm); Lawrence F. Katz & Alan B. Krueger, *The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015* (Nat'l Bureau of Econ. Research, Working Paper No. 22667, 2016), rev'd in Katz & Krueger, *supra* note 2; U.S. GOV'T ACCOUNTABILITY OFFICE, CONTINGENT WORKFORCE: SIZE, CHARACTERISTICS, EARNINGS, AND BENEFITS 3 (2015) (size of contingent workforce varies from 5% to 1/3 of total employed labor force depending on definitions and data), [www.gao.gov/assets/670/669766.pdf](http://www.gao.gov/assets/670/669766.pdf); Anat Bracha & Mary A. Burke, *Who Counts as Employed? Informal Work, Employment Status, and Labor Market Slack* 6 & Figure 2, Panel A (Federal Reserve Bank of Boston, Working Paper No. 16–29, 2016), available at [www.bostonfed.org/publications/research-department-working-paper/2016/who-counts-as-employed-informal-work-employment-status-and-labor-market-slack.aspx](http://www.bostonfed.org/publications/research-department-working-paper/2016/who-counts-as-employed-informal-work-employment-status-and-labor-market-slack.aspx); Katharine G. Abraham et al., *Measuring the Gig Economy: Current Knowledge and Open Issues* (Nat'l Bureau of Econ. Research, Working Paper No. 24950, 2018), available at [www.nber.org/papers/w24950](http://www.nber.org/papers/w24950); Katharine G. Abraham et al., *Driving the Gig Economy* (Nat'l Bureau of Econ. Research, Conf. Paper, 2018), available at [http://papers.nber.org/conf\\_papers/f110357/f110357.pdf](http://papers.nber.org/conf_papers/f110357/f110357.pdf).



## 4.2 THE STATE OF DATA ON THE GIG ECONOMY

Recognizing the importance of data and its analysis in addressing key tax issues in the gig economy, academics and government policymakers have begun to conduct empirical research regarding the size and growth of the gig economy and of contingent work more broadly.<sup>23</sup> For example, both the Treasury and the Bureau of Labor Statistics have attempted to measure the size, growth, and composition of the gig economy and independent contractor workforce.<sup>24</sup> Prominent academic economists have also engaged in estimation of the size of gig and contingent work.<sup>25</sup> And private and industry researchers have ventured into the game as well.<sup>26</sup> Thus, the state of learning about the sector is undoubtedly growing.<sup>27</sup>

Yet, researchers have confronted difficulties in gathering and analyzing empirical data about the gig economy and the independent contractor workforce more generally. Even as basic a question as one regarding the sector's size has yielded different answers depending on methodology.<sup>28</sup> Gaining insight into tax compliance concerns and behaviors and the effects of these concerns and behaviors on work is even more challenging. We flag here two limitations of data relevant to gig economy taxation that reveal the need for a more comprehensive approach to empirical research. First, available administrative tax data on the gig economy is determined by prior choices of workers and firms, which may tilt subsequent analysis. Second, available data is insufficient and does not hold the answers to every important policy question posed by the sector.

<sup>23</sup> See sources cited *supra* note 22.

<sup>24</sup> Jackson et al., *supra* note 2; BLS Study, *supra* note 22.

<sup>25</sup> Jonathan V. Hall & Alan B. Krueger, *An Analysis of the Labor Market for Uber's Driver-Partners in the United States* (Nat'l Bureau of Econ. Research, Working Paper No. 22843, 2016), available at [www.nber.org/papers/w22843](http://www.nber.org/papers/w22843).

<sup>26</sup> See, e.g., JP MORGAN CHASE INSTITUTE, *THE ONLINE PLATFORM ECONOMY IN 2018: DRIVERS, WORKERS, SELLERS, AND LESSORS* (2018), [www.jpmorganchase.com/corporate/institute/document/institute-ope-2018.pdf](http://www.jpmorganchase.com/corporate/institute/document/institute-ope-2018.pdf); UPWORK & FREELANCERS UNION, *FREELANCING IN AMERICA: 2018*, at [www.upwork.com/i/freelancing-in-america/2018/](http://www.upwork.com/i/freelancing-in-america/2018/).

<sup>27</sup> Knowledge about the gig economy will undoubtedly grow further as research opportunities become available in light of big data. See, e.g., Matthew J. Salganik, *BIT BY BIT* (2018) (guide for conducting social science research in the age of big data).

<sup>28</sup> See, e.g., Abraham et al., *Measuring the Gig Economy*, *supra* note 22; Katz & Krueger, *supra* note 2 (revising 2016 study downwards); Oei & Ring, *supra* note 16 (discussing differences in the literature between Treasury and BLS measurements, and between tax administrative data and survey data); see generally Roy Maurer, *Experts Puzzled by New BLS Contingent Workforce Data*, *SHRM* (June 8, 2018), [www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/experts-puzzled-new-bls-contingent-workforce-data.aspx](http://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/experts-puzzled-new-bls-contingent-workforce-data.aspx); Anat Bracha & Mary A. Burke, *How Big Is the Gig?* (Nov. 2017) (unpublished manuscript), available at [www.researchgate.net/publication/321228231\\_How\\_Big\\_is\\_the\\_Gig](http://www.researchgate.net/publication/321228231_How_Big_is_the_Gig).

#### 4.2.1 Data is Predetermined and Not Neutral

First, the data available for study is affected by prior decisions of gig economy firms. In their formative years, firms like Uber and Airbnb used their first-mover advantage to adopt favorable regulatory and tax positions.<sup>29</sup> These positions included classifying workers as independent contractors rather than employees, choosing to issue Forms 1099-K to them, and as noted above in Section 4.1.1, sometimes choosing to issue Forms 1099-K only if dollar and transaction thresholds were met.<sup>30</sup> Firms used the power of words and terminology to buttress these tax and regulatory choices. As one of us has documented, the shift from the “sharing economy” terminology to “gig” terminology may have reflected gig economy firms’ eventual concession that work in the sector was (contrary to earlier claims) subject to regulation and taxation, but it also reflected firms’ simultaneous interest in ensuring that such work was regarded as contingent and independent “gigging” rather than as constituting an employer-employee relationship.<sup>31</sup>

These threshold worker classification and income-reporting choices by the firms shaped the compliance and tax filing behaviors of workers, and hence shaped the data available to be studied. First, an inevitable effect of the worker classification decision was to push ridesharing drivers and other gig workers into filing IRS Schedule C to report income from gig work. That is, the decision to so classify the workers (and to issue Forms 1099-K) means that many gig workers are filing taxes – reporting income, taking deductions, and bearing self-employment and estimated tax burdens – as independent contractors, not as employees reporting Form W-2

<sup>29</sup> Oei & Ring, *supra* note 10 (identifying firms’ efforts to employ first-mover advantages to benefit from gaps and ambiguities in the law). Through the early years of 2008 to about 2013, many firms operated as if they were not subject to established regulatory and tax regimes. See, e.g., Jordan Barry & Elizabeth Pollman, *Regulatory Entrepreneurship*, 90 S. CAL. L. REV. 383 (2017) (characterizing firms as regulatory entrepreneurs and detailing new businesses tactics in achieving new legal treatment). Ultimately, however, as the firms grew, continued claims that this sector was not predominantly commercial and was instead “a community of sharers” became untenable. Oei, *supra* note 1. Gradually, the industries saw states and localities impose legal requirements directly on their operations. In some cases, governments simply confirmed that existing regulation applied to the firms. For example, jurisdictions began requiring Airbnb and similar homesharing firms to enter into agreements with governments to collect hotel taxes from guests and remit them to tax authorities. *In What Areas Is Occupancy Tax Collection and Remittance by Airbnb Available?*, AIRBNB, [www.airbnb.com/help/article/2509/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available](http://www.airbnb.com/help/article/2509/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available) (listing jurisdictions in which Airbnb collects and remits occupancy taxes); Oei & Ring, *supra* note 10, at 1023–27 (discussing the increasing number of jurisdictions in which Airbnb collects and remits taxes). In other cases, governments enacted new legislation specifically targeting gig economy businesses, such as state regulation imposing fees and taxes on ridesharing transactions and targeting discriminatory conduct. See, e.g., Mass. Sessions Laws, Acts of 2016, ch. 187 (An Act Regulating Transportation Network Companies) (imposing a new fee and other requirements).

<sup>30</sup> See Oei & Ring, *supra* note 10.

<sup>31</sup> Oei, *supra* note 1, at 107–36, 107 n.1 (noting that in a search of both the NEW YORK TIMES archives and the WALL STREET JOURNAL ONLINE conducted on October 2, 2017, the term “sharing economy” appeared twice as frequently as “gig economy” on the *New York Times* site, and almost four times as frequently on the *Wall Street Journal* site).

income. Accordingly, policymakers and academics looking to parse tax data on gig workers must now garner information about gig workers by examining Schedule C filings, and must tease out gig work from other types of independent contractor or self-employment work being reported on a Schedule C.

Second, the decisions of gig economy firms with respect to information reporting are also material. Having decided to classify workers as independent contractors, firms issued Forms 1099-K to workers rather than Forms W-2 (for reporting employee wages). Under plausible<sup>32</sup> regulatory interpretations, a Form 1099-K need not be issued to payees unless they receive more than \$20,000 in payments and engage in more than 200 transactions (e.g., rides).<sup>33</sup> At least some firms adopted this interpretation, and over the years, firms switched back and forth between only issuing Forms 1099-K to payees over these thresholds, issuing Forms 1099-K to payees regardless of how small the amounts, and issuing a different form – Form 1099-MISC – which is subject to a \$600 threshold.<sup>34</sup> Firm-level decisions about how to report income (and the instability of these decisions over time) no doubt impact the tax compliance decisions of gig economy workers. The empirical literature shows that information reporting to the IRS by payors of income increases income reporting (and thus tax compliance) by payees.<sup>35</sup> Thus, in years in which firms are not providing workers below the thresholds with a Form 1099-K, those workers are less likely to report their gig income and file Schedule C. Thus, tax return data for those years likely misses some of the workers actually participating in the gig sector.<sup>36</sup>

#### 4.2.2 Data Is Insufficient

Administrative tax return data also cannot answer all questions material to tax policymakers. For example, looking only at tax administrative data does not tell us how the taxpayer arrived at the filing positions she took, nor does it provide complete information about whether those filing positions are accurate. While a tax audit may reveal errors in filing positions, it is well known that the audit rate is very low, which means errors may go undetected for an extended period, leading to time lag in policy

<sup>32</sup> Oei & Ring, *supra* note 10 (discussing interpretation of the information reporting regulations and firms' 1099-K reporting positions); Bruckner, *supra* note 7 (same).

<sup>33</sup> I.R.C. § 6050W; Treas. Reg. § 1.6050W-1.

<sup>34</sup> Oei & Ring, *supra* note 10 at 1034–38; Oei & Ring, *supra* note 6, at 64–65. As of 2019, Uber is reporting that it will issue a Form-1099K only to drivers earning more than \$20,000 and driving 200 rides or more during the year. *Understanding Your Tax Documents*, UBER, [www.uber.com/us/en/drive/tax-information/tax-documents/](http://www.uber.com/us/en/drive/tax-information/tax-documents/). Starting in 2018, Lyft similarly announced that despite past practices, it would only be issuing Forms 1099-K to drivers meeting the \$20,000/200 rides threshold. *Tax Information for US Drivers*, LYFT, <https://help.lyft.com/hc/en-us/articles/115012926967-Tax-information-for-US-drivers>. Thus, it would not be surprising if driver confusion over tax reporting forms continues in the face of shifting reporting practices by firms and underlying complexity.

<sup>35</sup> Lederman, *supra* note 11.

<sup>36</sup> See sources cited *supra* note 22.

responses.<sup>37</sup> If workers in an industry of first impression are making systematic errors in positions they take, it would be useful to know that quickly in order to either (1) improve compliance upfront (e.g., by providing better guidance) or (2) reform laws that are unfeasible to comply with or are not intuitive.

In particular, with respect to the ridesharing sector, Schedule C filings do not necessarily tell us whether Uber drivers and other gig workers are accurately calculating and deducting the expenses they take on Schedule C (e.g., deductions based on miles driven when working for Uber or Lyft, or depreciation deductions), or what types of legal issues they are confronting. These deductions are not reported on Forms 1099-K or 1099-MISC by payors of income, so they are difficult to corroborate (other than through audit) and their accuracy is not obvious from the face of Schedule C.

Moreover, simply looking at tax return data does not provide information about the *process* by which workers figure out their ultimate tax liability. This process is significant: during the early days of the gig economy, the obligation of ridesharing drivers and homesharers to report their income for tax purposes became quickly apparent, despite early attempts by some to argue for exemption from regulation and taxation more generally.<sup>38</sup> Through a combination of media reporting,<sup>39</sup> some firm guidance to workers,<sup>40</sup> and various tax advising mechanisms,<sup>41</sup> gig economy workers began receiving a clear message that their work was part of a commercial undertaking and subject to taxation. However, the details of how to actually comply were less clear to these workers, some of whom might have been newcomers to gig work.<sup>42</sup>

Thus, an important set of questions – and one not readily answerable by studying only tax return data – concerns how participants in a new sector figure out their tax obligations in the relative absence of clear guidance from the taxing authority,

<sup>37</sup> Richard Rubin, *IRS Audit Rate Drops Again as It Examines Fewer High-Income Households*, WALL ST. J. (May 20, 2019), [www.wsj.com/articles/irs-audit-rate-drops-again-as-it-examines-fewer-high-income-households-11558363990](http://www.wsj.com/articles/irs-audit-rate-drops-again-as-it-examines-fewer-high-income-households-11558363990).

<sup>38</sup> See Oei, *supra* note 1 (describing transition to “gig economy” narrative).

<sup>39</sup> See, e.g., Jim Puzanghera, *Tax Advice for Gig Economy Workers*, L.A. TIMES (March 24, 2016), [www.latimes.com/business/la-fi-qa-tax-gig-economy-20160324-story.html](http://www.latimes.com/business/la-fi-qa-tax-gig-economy-20160324-story.html); Mitch Lipka, *How the Sharing Economy Makes Tax Filing Tougher*, MONEY (Apr. 15, 2015), <http://money.com/money/3822148/sharing-economy-taxes-uber-lyft/> (offering tax tips for sharing economy workers); Kathleen Pender, *If You Make Money in the Sharing Economy, the IRS Will Know*, S.F. GATE (Feb. 22, 2014), [www.sfgate.com/business/networth/article/If-you-make-money-in-the-sharing-economy-the-IRS-5258941.php](http://www.sfgate.com/business/networth/article/If-you-make-money-in-the-sharing-economy-the-IRS-5258941.php).

<sup>40</sup> See, e.g., *How Do Taxes Work for Hosts?*, AIRBNB, [www.airbnb.com/help/article/481/how-do-taxes-work-for-hosts](http://www.airbnb.com/help/article/481/how-do-taxes-work-for-hosts); *Your Tax Questions, Answered*, UBER, [www.uber.com/drive/tax-information/](http://www.uber.com/drive/tax-information/); Oei, *supra* note 1 at note 40.

<sup>41</sup> See, e.g., Lindsay Van Thoen, *Got a Side Hustle? Here's How to Pay Your Taxes*, FREELANCERS UNION (Feb. 10, 2015), <https://blog.freelancersunion.org/2015/02/10/got-side-hustle-heres-how-pay-your-taxes/>; Press Release, Intuit, Intuit and Uber Partner to Simplify Filing Taxes for On-Demand Economy Workers (Jan. 28, 2015), available at <https://investors.intuit.com/news/news-details/2015/Intuit-and-Uber-Partner-to-Simplify-Filing-Taxes-for-On-demand-Economy-Workers/default.aspx>.

<sup>42</sup> Some might be newcomers because they previously earned W-2 income. Others may be newcomers in the sense that they previously did independent contractor work but on a cash or unreported basis.

whether their attempts are successful, and how their compliance experiences and outcomes might be improved. Thus, there is a strong case for seeking qualitative sources of data to fill the gaps, enrich our knowledge, and help generate more productive tax policy recommendations.

### 4.3 THE IMPORTANCE OF QUALITATIVE APPROACHES

In light of the limitations of tax return data, the potential for tangible results from a richer methodological approach to tax research in the gig economy is quite real. For example, the researcher might conduct qualitative interviews with gig economy workers and/or tax preparers working with these populations, or might conduct in-depth surveys. Another way to get a sense of how gig workers might be approaching tax questions and finding solutions is to examine spaces in which they congregate, such as online or real-world community spaces.

We now discuss the findings of a study we conducted in the spring of 2015 of public online interactions among ridesharing drivers in three Internet discussion forums – Reddit.com, Uberpeople.net, and TurboTax Intuit AnswerXchange.<sup>43</sup> The study was published in the *Columbia Journal of Tax Law* in 2017 and we only summarize our key findings briefly here.<sup>44</sup> Our study serves as an example of how more in-depth and qualitative approaches can help shed light on tax issues that are difficult to probe using only administrative tax data and high-level survey data.

In our study, we constructed a self-assembled dataset of all Internet discussion threads on three public online discussion forums in which participants discussed tax issues concerning ridesharing drivers – Reddit.com, Uberpeople.net, and the Intuit TurboTax AnswerXchange forum. These online discussions spanned from late 2013 through early-to-mid 2015.<sup>45</sup> Using a combination of descriptive statistics and content analysis, we identified the major substantive tax concerns that occupied forum participants and examined how taxes impacted their driving and profitability decisions. We were also able to gain insight into the tax sophistication and risk attitudes of forum participants as well as their error correction and tax advice dispensing practices. These types of information would be difficult to obtain simply from tax return and aggregated administrative data.

The time periods covered in these Internet forums included some of the first years in which individuals driving for ridesharing companies confronted tax filing and payment obligations. Even at this early stage, Internet forum participants were already actively discussing a range of detailed tax questions, including how to properly determine and document business mileage, which expenses were deductible, and which withholding and estimated tax obligations applied to drivers.<sup>46</sup> This

<sup>43</sup> For a more detailed and complete description of our research findings, see Oei & Ring, *supra* note 6.

<sup>44</sup> Oei & Ring, *supra* note 6.

<sup>45</sup> The dates varied by forum. See *id.* at 72, 74, 76.

<sup>46</sup> *Id.* at 77.

engagement in learning about their tax obligations belied early claims by some observers that many workers were unaware of their duty to report and pay taxes on earnings from their gig work.<sup>47</sup> What we observed in these forums was that the window of even remotely plausible ignorance of tax obligations<sup>48</sup> had come to an end as waves of media reporting, guidance issued by the firms, and other sources highlighted the existence of tax obligations.<sup>49</sup> Instead, the online discussions showed the degree to which at least some gig economy workers engaged in meaningful attempts at tax compliance and how they struggled to make sense of and conform to the tax system.

#### 4.3.1 Major Substantive Tax Concerns Occupying Forum Participants

A significant focus of tax-related discussions on these Internet forums was the question of business expenses and outlays and their deductibility for tax purposes.<sup>50</sup> As noted, because most gig economy firms treat drivers as independent contractors rather than employees, workers have to file IRS Schedule C and are able to deduct costs and outlays associated with driving as “above the line” business expenses. Correspondingly, like other business persons, they are responsible for keeping track of and documenting such costs. We found that forum participants generally understood the value of being able to deduct such costs on their tax returns. However, they were less clear on precisely which expenses could be deducted and how. The degree of attention to deductions among forum participants may reflect the greater complexity and ambiguity regarding this component of the tax system as applied to microbusinesses, especially for those individuals using personal assets (cars or homes) partially for business purposes.

With respect to miles driven in ridesharing specifically, we found that forum participants – many of whom used their personal vehicles in performance of their driving function – needed to determine what portion of the miles driven in their vehicle counted for purposes of deducting business expenses. As we noted in our paper, ridesharing drivers may either use the IRS standard mileage method or may deduct actual expenses spent on driving, but both approaches require them to identify the miles driven for their ridesharing gig.<sup>51</sup> Such a determination includes both a substantive law component and a tax administration one.

<sup>47</sup> See generally Oei, *supra* note 1 (discussing some of those early claims).

<sup>48</sup> Of course, the taxability of income is not dependent on the taxpayer’s personal knowledge of the legal system. At best, such factors may influence the application of penalties should they otherwise apply.

<sup>49</sup> See sources cited *supra* notes 39–41.

<sup>50</sup> Oei & Ring, *supra* note 6, at 77.

<sup>51</sup> *Id.* at 78–79. I.R.C. § 274(d); Treas. Reg. § 1.274-5(j)(2); I.R.S. Notice 2014-79 (Sec. 3), 2014-2 C.B. 1001; I.R.S. News Release IR-2014-114 (Dec. 10, 2014). Rev. Proc. 2010-51, 2010-2 C.B. 883; U.S. DEP’T OF TREASURY, INTERNAL REVENUE SERV., Publ’n. No. 463, CAT. NO. 11081L, TRAVEL, GIFT, AND CAR EXPENSES 14 (2018) available at [www.irs.gov/pub/irs-pdf/p463.pdf](http://www.irs.gov/pub/irs-pdf/p463.pdf).

On the substantive side, drivers must wrestle with questions such as: Are miles spent driving to passenger “hotspots” deductible, or only miles with a passenger actually in the vehicle? Is having the ridesharing app on and being willing to take passengers sufficient to count mileage as business related, even if no passengers are actually driven (or if personal errands are run at the same time that the app is on)? On the administrative side, questions included: How and when is a taxpayer required to record and document mileage? Are estimates permitted? What forms of proof will be acceptable to the IRS?<sup>52</sup> Despite the significant number of comments on the forums devoted to discussion of what miles “count,” a clear consensus on answers to these questions did not truly emerge. However, there was widespread acknowledgment of the duty to report ridesharing proceeds as taxable income and of the fact that only a portion of driving-related expenses – based on a fraction of ridesharing miles driven – were deductible.<sup>53</sup> Drivers devoted some, but notably less forum discussion time to the question of deductibility of non-car-related expenses such as clothing, dry cleaning, water for passengers, and meals for drivers.

As we observed more extensively in our article, forum participants’ attention to the deductibility of expenses contrasted with their minimal discussion of income inclusions.<sup>54</sup> By the time we did our study, there seemed to be a general understanding among forum participants that rideshare earnings were clearly income and should be reported on their tax return. This was likely related to the fact that in 2015, Uber issued Forms 1099-K to all drivers, regardless of amounts earned and number of rides given.

It should be noted that the degree of attention focused on business expenses squares with predictions from the economics literature on tax compliance, which anticipates that even if the tax system incorporates features to improve tax compliance in reporting *gross* income (e.g., the introduction of third-party reporting via Form 1099-K), the *net* revenue effect may be less promising than expected because taxpayers may respond by taking excessive deductions, since deductions are not reported to the IRS.<sup>55</sup> But our study offers additional insights not available from the economics literature or from quantitative tax data on the sector, such as how specific features of the formal rules for tax deductibility create ambiguity that could lead to overreporting of drivers’ expenses. Additionally, the extensive debates online over deductions revealed the degree to which and the ways in which the driver-taxpayers misunderstood, ignored, complied with, or were intentionally breaching substantive tax law.

<sup>52</sup> Oei & Ring, *supra* note 6, at 85–86.

<sup>53</sup> Note that our methodology did not allow us to document how gross-basis reporting may have affected expense taking. See Joel Slemrod et al., *Does Credit-card Information Reporting Improve Small-business Tax Compliance?* (Nat’l Bureau of Econ. Research, Working Paper No. 21412, 2015), available at [www.nber.org/papers/w21412](http://www.nber.org/papers/w21412).

<sup>54</sup> Oei & Ring, *supra* note 6 at 83.

<sup>55</sup> Lederman, *supra* note 11; Morse et al., *supra* note 11; Slemrod et al., *supra* note 53.

#### 4.3.2 Interpretation of Tax Forms Received from Firms

Our research also found that driver familiarity with information reporting and Form 1099-K was quite variable. This was likely due in part to the timing of our study, which covered Internet forum discussions in 2015 and earlier years.<sup>56</sup> Uber had changed its tax information reporting practices in 2015 and had shifted to reporting *all* driving payments on Form 1099-K, regardless of amounts earned or number of rides given.<sup>57</sup> Lyft, by contrast, was still only issuing Forms 1099-K to those earning above the \$20,000/200 transaction threshold.<sup>58</sup> Not surprisingly, drivers posting on all three forums reported confusion about why and when they would receive a Form 1099-K from Uber. Some were puzzled that they received a form at all, while others were confused regarding why they received a form from Uber but not Lyft if they were driving for both.<sup>59</sup>

Forum posters also had questions about the numbers on the Forms 1099-K received. Some correctly understood that the numbers on the forms were gross amounts and that fees (e.g., safe ride fees, tolls, platform fees) had to be deducted by the drivers on IRS Form Schedule C, while others thought the forms contained errors. We saw that more knowledgeable forum participants (including those marketing tax advice and expertise) stepped in to explain how to correctly interpret the forms, though we cannot tell how impactful those interventions were. Again, a qualitative look into ridesharing tax compliance revealed not just that taxpayers might struggle with preparing a tax return based on the Forms 1099-K they received (an observation that might be extracted from tax administrative data) but also illuminated why they found them confusing and how such forms might be better designed or explained to recipients.

#### 4.3.3 Estimated Taxes and Analyses of Profitability

Regardless of the forms received, gig workers, like all taxpayers filing as independent contractors in the United States, must meet requirements for quarterly estimated income tax payments during the year.<sup>60</sup> This requires them, in effect, to “withhold” (i.e., set aside) taxes themselves to pay their estimated tax liability on a quarterly basis. Some forum participants seemed unfamiliar with this obligation to pay and withhold.<sup>61</sup> This created two risks for these filers: first, they may owe interest and penalties for estimated tax payments not timely made; and second, they may fail to appreciate the financial impact of taxes (which tend to

<sup>56</sup> Oei & Ring, *supra* note 6, at 72–73, 74–75, 86–87.

<sup>57</sup> *Id.* at 64–65, 85–86.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 86–87.

<sup>60</sup> See *supra* note 18.

<sup>61</sup> Oei & Ring, *supra* note 6, at 91–92.



be due at a future time) when assessing the overall profitability of their current decision to drive.<sup>62</sup>

We were able to observe how taxes factored into posters' assessments of whether it is profitable to drive for ridesharing companies and how to drive profitably.<sup>63</sup> Profitability was among the most frequently discussed topics in the threads we examined, and tax considerations factored into analyses of profitability in a number of different ways. As discussed, taxes obviously were a consideration in determining the overall profitability of the driving decision, though (as noted) forum posters did not always fully appreciate the impact of taxes. In addition, tax numbers also seemed to serve as proxies for analysis of economic losses (e.g., economic wear and tear on the vehicle from driving), though some forum participants appeared to conflate and confuse tax losses (i.e., what is deductible for tax purposes) with economic losses (i.e., true costs of driving).<sup>64</sup> Tax considerations also appeared to frame forum poster computations of profitably more generally: forum posters frequently assessed the profitability of driving on a per mile rather than per hour basis, presumably due to the fact that mileage expenses are computed on a per mile basis.<sup>65</sup> Finally, tax considerations also impacted forum poster analyses of whether it was better to drive on a part-time versus a full-time basis.

Our analysis thus provides valuable texture for understanding how drivers approach and analyze profitability. While quantitative data might be able to link taxpayer characteristics with patterns of ridesharing work and income, it does not illuminate the dynamics underlying that link. For example, quantitative data does not tell us whether taxpayers understood the impact of taxes on profitability but nonetheless chose to trade off current access to cash in exchange for bearing future costs (such as their car wearing out more quickly), or whether they failed to appreciate the impact of taxes in their calculations of profitability at all. Qualitative analysis can be employed here to fill such gaps.

#### 4.3.4 Worker Classification

We also saw some discussions about forum participants' understandings of and attitudes toward the worker classification debate.<sup>66</sup> The topic, though not very

<sup>62</sup> *Id.* (As we discuss in this 2017 paper, the observations may square with the broader theoretical literature on "tax salience.") See generally David Gamage & Darien Shanske, *Three Essays on Tax Salience: Market Salience and Political Salience*, 65 TAX L. REV. 19 (2011).

<sup>63</sup> Oei & Ring, *supra* note 6, at 90–98 (fuller discussion).

<sup>64</sup> *Id.* at 94–95.

<sup>65</sup> *Id.* at 95–96.

<sup>66</sup> Classification as an independent contractor requires that workers bear responsibility for paying and filing all employment-related taxes but increases the likelihood that such taxpayers can meaningfully deduct business expenses. For taxpayers classified as employees, the ability to deduct employee business expenses prior to 2018 was limited by IRC § 67; for taxable years beginning after 2017, the deduction for employee business expenses has been suspended. IRC § 67(g).

prominent on the forums, did arise periodically. To the extent participants commented on worker classification, their views were mixed on whether independent contractor status was desirable. Their responses, however, were relatively uniform in that their preferences were based on reasons other than tax reporting and compliance. Many instead emphasized the positives of not having a boss and expressed concerns about potential liability for back taxes should their classification change.<sup>67</sup>

#### 4.3.5 *Error Correction and Forum Culture*

We were also able to examine broader “cultural” aspects of the discussion forums, including how well forum participants understood tax law, how they approached tax compliance, how knowledge was transmitted and errors corrected in the forums, and the accuracy and content of tax advising taking place in the forums.<sup>68</sup> Reaching beyond the limits of quantitative data, the qualitative picture of how taxpayers identified, interpreted, shared, and reassessed tax knowledge provides valuable clues about knowledge transmission and potentially successful approaches for reaching taxpayers. Notably, although forum participants displayed a range of tax sophistication, and although some forum participants posted erroneous “tax advice” to peers in the Internet forums, those errors were often corrected by other participants on both Reddit and Uberpeople, and often quite rapidly.<sup>69</sup> For example, in one forum, after several participants had noted that they would deduct uniforms and haircuts, other posters joined the conversation to confirm that in fact these were not deductible expenditures.<sup>70</sup> Tax advice dispensed on the forums by posters appearing to be peers (i.e., other drivers) was generally accurate, though there were notable instances of inaccurate or misleading advice as well.<sup>71</sup> Posters often referred to IRS publications in making their statements. Forum posters also discussed the third-party apps, spreadsheets, and other resources they used in documenting and tracking expenses.<sup>72</sup> In addition, we also observed instances of CPAs and others claiming to be experts offering tax advice on the forums, sometimes as a way to market their services.<sup>73</sup>

#### 4.3.6 *Benefits of Qualitative Empirical Study of Internet Forums*

Most labor-focused empirical scholarship on the gig economy and contingent workforce to date has focused on counting the magnitude and changing composition of

<sup>67</sup> Oei & Ring, *supra* note 6 at 88.

<sup>68</sup> *Id.* at 98–105.

<sup>69</sup> *Id.* at 98–99.

<sup>70</sup> *Id.* at 99.

<sup>71</sup> *Id.* at 102.

<sup>72</sup> *Id.* at 101–02.

<sup>73</sup> *Id.* at 103–05.

the workforce.<sup>74</sup> This type of research uses tax administrative data and broad survey data to make estimates and predictions. However, as discussed above, tax return data is determined by ex ante choices of taxpayers, which affects the kinds of quantitative data available for study. Independent of this constraint, such tax return data inherently cannot speak to all the important questions relevant to policy formation. Moreover, tax return filing occurs months after the tax year in question, and parsing and analyzing the data takes even longer. More in-depth and qualitative approaches like the one we employed can provide valuable and timely observations and information for tax policymakers.

Most notably, by studying Internet forums, we were able to observe forum participant reactions to tax issues (such as the firms' changing positions on Form 1099 issuance) as they occurred. This can help tax administrators and policymakers flag issues likely to be of concern to taxpayers and tax return filers in real time, which enables them to be more responsive to taxpayer needs. Such intel is valuable from a taxpayer services perspective because it can confirm intuitions about potential problems, signal problems as they occur, and illuminate a path to minimize taxpayer burdens. Interventions based on qualitative data need not be costly, nor irreversible. For example, the IRS established a "Sharing Economy Tax Center" on its website to help gig workers understand their tax obligations better.<sup>75</sup> This type of intervention is arguably low-hanging fruit that, if timely done, may be valuable to many taxpayers.

Moreover, by studying Internet forums, we were able to glean broader insights. For example, we were able to deduce how taxpayers thought about the profitability of their driving decisions and how taxes affected how they assess and frame profitability and the decision to drive. Such profitability assessments may provide more nuanced detail to economic analyses of how taxes impact labor supply decisions. We were also able to gain an appreciation for the degree of accuracy of tax advice on these Internet forums, and the process by which forum participants learned about their tax obligations online. These observations may be useful to taxing authorities in thinking about more or less effective ways to conduct taxpayer education and outreach.

More broadly, we were able to observe how participants in a new economic sector grappled with preexisting tax rules that were not designed with the sector in mind. These findings not only help us understand how well the tax system is working for gig workers, they may also support broader judgments about the adequacy of the tax system in the face of fundamental technological and economic shifts, and about how the system might need to be reformed.

<sup>74</sup> See, e.g., Anat Bracha & Mary A. Burke, *The Ups and Downs of the Gig Economy*, 2017 (Federal Reserve Bank of Boston Working Paper No. 18–12, 2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3303101](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303101).

<sup>75</sup> INTERNAL REV. SERV., SHARING ECONOMY TAX CENTER, [www.irs.gov/businesses/small-businesses-self-employed/sharing-economy-tax-center](http://www.irs.gov/businesses/small-businesses-self-employed/sharing-economy-tax-center).

#### 4.3.7 Limitations of Our Study

Our study was, of course, subject to limitations. First, we were not able to determine what percentage of ridesharing drivers posted on the Internet, nor were we able to know how many “lurkers” there were (drivers or interested others who read these public forums but did not post in them). We also do not know how representative forum participants are of ridesharing drivers more generally. We cannot confirm a relationship between what people post on the Internet and what they actually do on their tax returns – for example, just because forum participants seem to understand that income from gig work is reportable does not mean they actually reported that income. We cannot discern whether the accurate tax advice dispensed on the forums drowned out the inaccurate advice, or vice versa.

Finally, our study was only a snapshot: it only dealt with ridesharing drivers, not homesharers. It also does not account for recent changes in the tax law. In particular, the new deduction under IRC § 199A introduced in the 2017 tax reform may impact gig workers. Effective for 2018, independent contractors, but not employees, potentially qualify for a new deduction equal to 20 percent of their qualified business income.<sup>76</sup> Our study does not address how ridesharing drivers may grapple with the intricacies of this complex new deduction, nor does it address how the availability of the deduction may impact driver assessments of (1) the profitability of driving or (2) preferences for independent contractor versus employee classification. The 2017 legislation’s suspension of below-the-line miscellaneous itemized deductions may also tilt worker preferences toward independent contractor classification because employee classification would render many expenses below the line and hence unavailable.

Moreover, as noted, our study captured a moment in time when Uber was issuing Forms 1099-K to all drivers while Lyft was only issuing those information reporting forms to drivers earning over the \$20,000/200 transactions threshold. In 2016 and 2017, Lyft issued Forms 1099-K to drivers earning over \$600.<sup>77</sup> And, as noted, both Uber and Lyft now issue those forms only to drivers earning above the Form 1099-K thresholds. We do not know how drivers may have adjusted their compliance and income reporting behaviors in light of those changes. We also do not know how increases in available guidance (both from the IRS and from other sources) and increasing familiarity among drivers and tax preparers with gig work over time have affected compliance behaviors or forum culture.<sup>78</sup> One notable change over the

<sup>76</sup> Rev. Proc. 2018-57. Although a number of restrictions and limitations apply, few of them apply to workers with qualified business income below \$321,400 (married) and \$160,725 (single) in 2019. For the many gig economy workers with incomes below statutory thresholds, the more onerous restrictions would not apply and they would likely qualify for the deduction assuming they are independent contractors.

<sup>77</sup> *Tax Information for US Drivers*, LYFT, *supra* note 34.

<sup>78</sup> The guidance now available on the IRS website does spell out the obligation under a bold header entitled “Tax Payments: Those in Sharing Economy May Need to Make Estimated Payments.” INTERNAL REV. SERV., SHARING ECONOMY TAX CENTER, *supra* note 75. Some firms (Uber and Etsy) also

years has been the increasing level of detail provided to drivers by gig economy firms regarding taxation and tax forms,<sup>79</sup> and the IRS introduction of its “Sharing Economy Tax Center” webpage for gig economy workers.<sup>80</sup>

#### 4.4 CONCLUSION: FUTURE DIRECTIONS

Individually, all research methods have weaknesses. Thus, we have argued the merits of expanding the range of research approaches used to investigate tax in the gig economy to include qualitative techniques such as in-depth interviews and surveys and content-based examinations of public Internet communities. Despite the appeal of quantitative methods that count existing data points (such as those relying on tax return data and answers to high-level surveys), these approaches face two important limitations. First, they simply do not address some of the central tax questions we identified above such as the process by which taxpayers seek to comply with the tax system. Second, the kinds of data available to be counted (including Forms 1099 or Schedule C filings) are not neutral – they are the product of specific choices of firms and workers that dictate what exists to be counted. Approaching tax questions using a richer set of methods offers the greatest likelihood of developing a nuanced understanding of complex tax issues. For example, if researchers were to mine IRS data for evidence of gig worker compliance and noncompliance (including worker demographics and whether they are accurately incorporating new IRC § 199A into their tax filings) and combine this with qualitative interviews regarding how workers approached tax filing, what motivated their work decisions, and how they understood the choices and trade-offs being made, the net empirical results would afford a more robust picture of how gig workers experience the tax law and their compliance obligations. This would in turn inform assessments of the tax system, including how well designed the tax law is and whether particular rules and requirements pose special challenges for small-scale economic transactions. As another example, qualitative interviews regarding how ridesharing drivers understand their relationship to firms for which they drive may provide texture on how they understand and evaluate worker classification issues.

Ultimately, the drive to understand the gig economy and the contingent workforce more broadly takes place in a deeply contested space. Empirical evidence of the existence and shape of the gig and contingent work sectors is often sought by constituencies advancing various positions. Gig economy firms endeavoring to raise capital and appease investors may hope to establish that the sector is large and

provide more guidance. *Do I Owe Quarterly Taxes?*, UBER, <https://help.uber.com/partners/article/do-i-owe-quarterly-taxes?nodeId=98a642e5-1123-4895-948a-cb40b6845aa4>; *Taxes 101: Understanding the Essentials*, ETSY, [www.etsy.com/seller-handbook/article/taxes-101-understanding-the-essentials/22721885775](http://www.etsy.com/seller-handbook/article/taxes-101-understanding-the-essentials/22721885775).

<sup>79</sup> For example, Uber’s website now includes a sample Form 1099-K with an explanation of what the different numbers mean for a driver. *Understanding Your Tax Documents*, UBER, *supra* note 34.

<sup>80</sup> INTERNAL REV. SERV., SHARING ECONOMY TAX CENTER, *supra* note 75.

significant. Those concerned about worker protection may aim to demonstrate that traditional work and worker protections are under threat. Constituencies opposed to tax (or other) reforms or special regimes may strive to show that the gig economy is too small to justify even considering reform. The fact that empirical descriptions of the gig economy remain so contested makes it even more imperative that researchers get these descriptions right and that they harness a variety of methodologies to do so.