STATEMENT FOR THE RECORD

AMERICAN TRUCKING ASSOCIATIONS, INC.

BEFORE THE SENATE SUBCOMMITTEE ON EMPLOYMENT
AND WORKPLACE SAFETY OF THE SENATE COMMITTEE
ON HEALTH, EDUCATION, LABOR AND PENSIONS

HEARING ON PAYROLL FRAUD: TARGETING BAD
ACTORS HURTING WORKERS AND BUSINESSES

NOVEMBER 12, 2013
Chairman Casey, Ranking Member Isakson, and members of the panel, American Trucking Associations, Inc. (“ATA”) submits this statement in response to the Subcommittee’s hearing on the issue of worker misclassification. ATA is the national association of the trucking industry. Through a federation of 50 affiliated state trucking associations and industry-related conferences and councils, ATA represents more than 37,000 members covering every type of motor carrier in the United States. The trucking industry is the backbone of the nation’s economy with nearly 7 million Americans working in trucking-related jobs. Given the critical role that independent contractors (“ICs”, also referred to as owner-operators in the trucking industry) play in enabling the nation’s trucking companies to deliver goods to the public at large, ATA is pleased to offer its perspective on the classification of workers.

Introduction

The growing importance of independent contracting as an engine of economic growth – particularly among small businesses – is widely recognized.1 The trucking industry, with its long history of independent contracting, underscores the point. For decades, independent owner-operators—who drive vehicles in which they maintain an ownership interest, or employ others to drive them—have been widely used by trucking companies to meet fluctuations in demand, provide needed equipment at considerable cost savings, and address longstanding shortages of operators. In addition, a number of trucking companies have structured their business models around the use of independent contractors, recognizing that the experience, maturity, energy, and initiative of the independent owner-operator can be harnessed to the mutual benefit of trucking companies and contractors alike. ICs share the motor carrier’s incentives to meet customer demand safely and efficiently and increase revenues and profits. By successfully and skillfully managing operations, an IC grows his or her own business—whether by productively performing services him or herself, or by hiring employees to provide additional services—and, at the same time, contributes to the success of the trucking company.2

Recently, there have been increased efforts at the federal and state level to legislatively impose conditions making it difficult to predictably and reliably structure independent contractor relationships. These efforts, which range from repeal of the Section 530 safe harbor rules to presumptions of employment, are based on mistaken, paternalistic notions that will only serve to reduce economic growth, stifle small business entrepreneurialism, and increase consumer costs—all with an uncertain impact on overall tax revenues. ATA will briefly demonstrate why these efforts are misguided and unfounded. No doubt, there are instances where workers may be subject to excessive control of methods and means of performance and thus improperly classified as ICs. However, devising ever more complicated classification tests and imposing presumptions that detract from predictability of status and therefore stifle use of ICs is not the answer.

ICs in the Trucking Industry Choose to be Entrepreneurs

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One widespread misconception is that ICs in the trucking industry would prefer to be employees but instead have IC status forced upon them. The results of a recent survey of ICs deemed to be representative of IC drivers in the trucking industry in general\(^3\) suggest otherwise. When asked how easy it would be to be hired as an employee driver, sixty-seven percent said it would be “very easy” and another thirteen percent said it would be “easy.”\(^4\) Those who indicated it would not be easy attributed the difficulty to safety concerns over their driving record (e.g., previous accidents or violations). This data reflecting the IC’s free choice mirror data across all industries, indicating the vast majority of independent workers affirmatively chose that path, with “[o]nly 1 in 7 report[ing] that the decision to work independently was due to factors beyond their control.”\(^5\)

ICs in the trucking industry elect and prefer this type of arrangement, because they like independence, freedom, and control of their own destiny.\(^6\) Again, the trucking industry reflects the population at large. Several studies have found that ICs prefer independent arrangements to employee arrangements and that ICs have a higher sense of job satisfaction than employees.\(^7\) Additionally, research indicates self-employment is springboard for entrepreneurship and small business creation.\(^8\)

## ICs in the Trucking Industry Pay their Taxes

The belief that classification of workers creates a tax gap motivates legislative efforts to reclassify ICs as employees. The notion of a tax gap is based on the premise that employers subject to withholding taxes on wages paid to an employee are more likely to submit those taxes than ICs are to submit tax payments voluntarily. The facts cast doubt on the premise. Of the IC drivers surveyed, ninety-four percent said they engaged a tax preparer to prepare their returns while an additional three percent said they use tax software.\(^9\) These numbers suggest a high level of tax compliance among IC drivers and, in conjunction with IRS research that estimated that ninety-nine percent of income is reported on a W-2 (employee) compared to ninety-six to ninety-seven percent on a Form 1099-MISC (IC)\(^10\), means that reclassification of ICs would have little impact on the purported tax gap.

## ICs Can and Do Fare Well Relative to Employee Drivers

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\(^4\) Id. at 17.


\(^6\) Univ. of Arkansas Study at 54.


\(^9\) Univ. of Arkansas Study, at 29.

\(^10\) Navigant Study, at 40-41.
One more common misconception is that IC drivers cannot do as well financially as employee drivers. Like any small business, the numbers vary as there is ample opportunity for profit or even loss depending on individual business practices. However, it is common for IC drivers to earn more than similarly situated employee drivers. As one industry expert recently put it, “the average owner-operator fares better than company driver counterparts,” with a net income of $51,912 compared to “about $40,000 per year for the same amount of work” by an employee driver.11 Similarly, the Bureau of Labor Statistics puts the average annual wage for commercially-licensed driver at just over $40,00012 while a trade group for IC drivers calculated annual average net income for its members to be $50,000.13

Conclusion

As ATA has noted, the foundation for the pursuit of further legislative efforts to address alleged misclassification of employees as ICs is very weak at best. The limited potential for collection of additional tax revenues could be far outweighed by negative impacts on small business job creation, economic growth and higher costs for consumers. Instead, a simplification of the many confusing tests for determining a worker’s status to focus on control over methods and means of performance would encourage greater compliance and allow authorities to focus investigation and audit resources on the small percentage that may be deliberately cheating the system. Some of the most recognized trucking company names today, such as Schneider National, C.R. England, Werner Enterprises and J.B. Hunt, started off as single truck owner-operators. We need to ensure we do not, through legislation, snuff out the opportunity for today’s ICs to become the next generation of recognized trucking company names.