

**Nomination for the
2023 AAA Innovation in Accounting Education Award**

Nomination: Borthick, A. F. (AAA member) and L. N. Smeal. 2020. Data analytics in tax research: Analyzing worker agreements and compensation data to distinguish between independent contractors and employees using IRS factors. *Issues in Accounting Education* 35(3): 1-23.

Purpose: Provide a learning experience in tax data analytics to enable learners to thrive in tax practice, where the emphasis continues to shift from the reporting/compliance function to advanced planning for maximization of wealth.

January 21, 2023

Summary

This case responds to the need for students planning a career in tax practice to develop data analytic expertise integrated with tax research. The case situates learners as tax practitioners with the assignment to analyze compensation data and worker agreements to assess a company's likely compliance with requirements to classify workers as independent contractors rather than employees based on factors the Internal Revenue Service (IRS) uses for worker classification. The classification (employee or independent contractor) matters because employers are responsible for their employees' payroll taxes, but employers are not responsible for payroll taxes for independent contractors. The case integrates tax research (for identifying applicable regulations and rulings) and analysis (querying the client's compensation transactions and examining worker agreements) to identify risky employment practices, recommend corrective action to bring the company into compliance, and estimate penalties if the IRS were to declare the company not in compliance. Students electing tax practice will need to be able to perform similar analyses of company data in advance of tax agency audits given that they analyze accounting data when auditing taxpayers. Instructors can configure the requirements and scaffolding resources to match the initial tax research and database querying skills of their students.

Attachments: BorthickSmeal2020Issues.pdf: Published case
BorthickSmeal2020IssuesTeachingNotes.pdf: Teaching notes
BorthickSmealSupplementaryFiles.zip: Files for using the case (not including videos)

Sendfile link for downloading videos: The authors can supply a link for downloading videos. Ask borthick@gsu.edu for a link when you are ready for it. Links are good for only 10 days, and the authors will supply a new link whenever it is needed.

**Nomination for the
2023 AAA Innovation in Accounting Education Award**

Nomination: Borthick, A. F. (AAA member) and L. N. Smeal. 2020. Data analytics in tax research: Analyzing worker agreements and compensation data to distinguish between independent contractors and employees using IRS factors. *Issues in Accounting Education* 35(3): 1-23.

Purpose: Provide a learning experience in tax data analytics to enable learners to thrive in tax practice, where the emphasis continues to shift from the reporting/compliance function to advanced planning for maximization of wealth.

Innovative Aspects

This work is innovative in that it (1) offers a learning experience for developing students' ability to perform data analytics on transaction data in a tax context, (2) integrates tax research and data analytics, (3) provides scaffolding resources that instructors can configure for students with varying levels of tax research and data analytic skills, (4) enables students to experience tax practice as wealth maximization, and (5) gives students experience with the requirements for classifying workers as independent contractors rather than employees, a tax context of growing importance in the gig economy. The sections below explain how the innovation achieves these objectives.

Develop ability to perform data analytics on company transaction data

Historically, much of tax practice focused on reporting/compliance, i.e., ensuring that tax filings were accurate, complete, and timely, and much of the work was accomplished with spreadsheets. Even with the ongoing move to more advanced tax planning, until recently, the work being done was performed without the benefit of sophisticated modelling technology. But tax practice has undergone a swift transformative change, from after-the-fact data gathering, reporting, and filing to maximizing the present value of after-tax income/cash. Because enterprise-wide data are now becoming accessible, tax accountants are expected to identify the tax implications of potential decisions well before they are made, an approach requiring the analysis of transaction data.

Analyzing voluminous transaction data to identify tax implications prospectively is a key aspect of tax accountants' work that requires new analytic expertise, namely, querying data in relational database systems. In these systems, data manipulations are coded in Structured Query Language (SQL) or derivatives of it. The work nominated here was designed to offer tax students a learning experience for developing database querying expertise. To the authors' knowledge, it is the first published case that stages learning to query a transaction database in a tax context, for advising a client on its likely compliance with taxation requirements. The case is also innovative in offering practice and quiz questions that instructors can use to assess students' querying skill without having to grade the query files. The practice questions also serve the purpose of confronting students with their potentially poor performance soon enough for them to remedy it before taking the quiz.

Integrate tax research and data analytics

Until it became possible for tax accountants to analyze enterprise-wide datasets, applying tax research findings to a specific company's situation was problematic because there was no systematic way to confirm that what a company said its practices were was what actually transpired. While a company may have established policies, documenting their implementation requires verification. Analyzing transaction data with querying is a way to verify that a company's claims about how it conducts its business are how it actually operates. This case is innovative in that it enables students to determine exactly how a company's business processes are conducted through database querying and compare those results with the policies the company says it follows and with the factors that IRS uses to classify workers as employees or independent contractors. In essence, students are integrating three sources: actual practices as evidenced in transactions pertaining to compensation from the accounting system, agreements stipulating how workers are managed and paid, and IRS guidelines for classifying workers as employees or independent contractors. In this case, students determine the company's realized business processes by querying its compensation transactions. Then they compare the query

results with the policies specified in agreements with workers and with IRS classification requirements. To the authors' knowledge, no other published case integrates these three kinds of data and information sources for tax practice.

Provide instructors with scaffolding resources for varying levels of initial skills

The case simulates an engagement where accountants help a new business identify risky employment practices and correct them before being audited by the IRS. To complete the case, students use tax research skills to gain knowledge of the employee versus independent contractor rules (Rev. Rul. 87-41 (IRS 1987) and Treas. Reg. § 31.3401(c)-1 (Treasury 2015)) and use data analysis skills to detect the existence of transactions indicating that certain workers might be misclassified by the company. The learning objectives are:

1. Perform tax research to identify the factors relevant to IRS's classification of workers as employees or independent contractors.
2. Analyze agreements with workers and data from a client's accounting system revealing its employment and payment practices to assess consistency with IRS's factors.
3. Estimate employment taxes and penalties due for noncompliance by calculating them based on specified assumptions.
4. Complete a memorandum to file that documents the findings from the analyses and their implications for compliance with independent contractor status.

Because students may have varying levels of skill in tax research and database querying, the case offers a range of scaffolding choices, enabling instructors to tailor the scaffolding for learning to their students' skill levels. The availability of a range of scaffolding makes it possible for instructors to configure the case for learners with (1) little tax research and/or little or no database querying skills (they get all the scaffolding materials with some of the requirements), (2) moderate tax research and database querying skills (they get selected portions of the scaffolding and more of the requirements),

and (3) extensive tax research and database querying skills (they might get only the conversation, data file, and business process diagram (BPD) but all of the requirements.) Furthermore, the database querying can be assigned to students with no requirement for tax research, e.g., in courses in accounting data analytics or IT auditing.

The case is staged in a conversation giving the assignment as a tax accountant might receive it. The case supplies a set of requirements, agreements with workers, a reporting template with two rows completed as examples of the extent of reporting needed, data attribute definitions for the compensation data, a business process diagram (BPD) for the company's interactions with workers, and a Microsoft Access® file with tables of compensation data. Scaffolding resources for learning include (1) teaching notes with a discussion of the difference between independent contractors and employees and the risks of misclassification; (2) directions for searching for relevant tax authority and evaluating the applicability and significance of search results; (3) a completed analysis of independent contractor agreements and compensation; (4) a memorandum to file with analysis results and identification of risky practices; (5) a script with screenshots illustrating the querying and query results for IRS Factor 2; (6) a Microsoft Access® file with queries for all factors; and (7) two MP4 video files (25 minutes altogether) with voice narration of getting started in Access and querying for IRS Factor 2. To the authors' knowledge, no other published case offers this extensive a set of staging and scaffolding resources for integrating tax research and data analytics, which makes it usable with students with a wide range of initial skills in tax research and database querying.

Experience tax practice as maximization of wealth

The traditional view of the tax function has changed, from a compulsory reporting/compliance function to more maximization of the present value of after-tax income/cash, i.e., a shift from hindsight to insight/foresight through querying the data to understand how different aspects of the business affect tax outcomes. With analytics, companies can adjust business practices to foster compliance and

avoid penalties and audits. This case provides students with such an experience in that they analyze compensation data in conjunction with worker agreements and classification requirements to identify needed adjustments to business practices that will bring the company into compliance and avoid penalties for non-compliance. In this context, wealth maximization is realized through defensible independent contractor relationships and penalty avoidance. To the authors' knowledge, no other published case offers this this kind of experience in a data intensive context.

Educational Benefits

The educational benefits to students of this case include (1) developing data analytic expertise through querying relational databases, (2) learning to integrate tax research and data analytics to ensure compliance with tax requirements and avoid penalties, (3) enabling the case to be workable by students with varying levels of tax research and data analytic skills, through the provision of extensive scaffolding resources, (4) experiencing tax practice as wealth maximization, and (5) learning about a significant tax context (classification of workers as independent contractors or employees). The first four benefits, as discussed earlier, represent essential skills for new tax accountants.

The fifth benefit concerns a tax context of growing importance and pervasiveness as more people work in the gig economy on a job or task basis rather than as employees. California's experience with Assembly Bill 5 (2019) to classify Uber and Lyft drivers as employees illustrates the contentiousness of the issue. Uber and Lyft warned shareholders that their businesses would be adversely affected if drivers were classified as employees instead of independent contractors. While the requirements in Assembly Bill 5 were subsequently relaxed in a 2020 ballot initiative, the revenue needs of states will continue to propel them to seek to classify gig economy workers as employees, driving demand for work in this context by tax accountants.

Adaptability by Other Educational Institutions or Situations

The innovation has been used successfully at Georgia State University, Auburn University, Louisiana State University, University of Waterloo, University of Illinois at Urbana-Champaign, University of Nebraska—Omaha, University of St. Thomas, Florida Gulf Coast University, Washburn University, University of Alaska—Anchorage, and St. Edward’s University. Faculty at the University of Waterloo have developed the data analyses in the R language and Power BI. The case has been used with undergraduate and master’s students in different configurations in federal tax and tax research courses. Because the case provides scaffolding for learning in the form of work templates, worked analyses, and videos for data analysis, it is adaptable for learners at different levels of tax research and database querying skills as indicated in Table 1 in the published work. Although the compensation data are supplied in a Microsoft Access® file, the data could be imported into and queried in any relational database system, including the industrial-scale enterprise system platforms that large companies use. Based on the extensive base of faculty already using the case at different kinds of schools, we believe it is adaptable across many institutional and course settings.

The innovation has been recognized with the following awards:

1. 2018 AAA AIS Section Midyear Meeting Best Education Paper, sponsored by the IMA
2. 2021 AAA TLC Section Outstanding Instructional Contribution in Accounting Award, sponsored by Deloitte
3. 2022 AAA ATA Section Teaching Innovation Award

Data Analytics in Tax Research: Analyzing Worker Agreements and Compensation Data to Distinguish Between Independent Contractors and Employees Using IRS Factors

A. Faye Borthick
Lucia N. Smeal
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ABSTRACT: This case prompts learners to analyze compensation data and worker agreements to assess a company's likely compliance with requirements for classifying workers as independent contractors rather than employees based on the factors the Internal Revenue Service (IRS) uses for compliance with IRS Rev. Rul. 87-41 and Treas. Reg. § 31.3401(c)-1. Students combine tax research and data analysis to identify risky employment practices, recommend corrective action to bring the company into compliance, and estimate potential penalties if the IRS were to declare the company not in compliance. Students complete a data analysis report as a basis for preparing a research memorandum. Students electing tax practice will need to be able to perform similar analyses of client data in advance of IRS audits given that the IRS analyzes accounting data when auditing taxpayers. Given the guidance in the Teaching Notes, no database query experience is necessary on the part of instructors.

Keywords: data analytics; employees; independent contractors; Rev. Rul. 87-41; tax research; Treas. Reg. § 31.3401(c)-1.

I. THE CASE

The Scene

NewPub has asked its accounting firm to analyze its operations to determine whether it is properly distinguishing between employee and contractor status for its writers. The CEO is Robert. The tax partner on the engagement is Rony. The senior tax professional is Jordan.

Robert: We have a large group of writers who gather and produce content for our website. We want to make sure the writers meet the requirements for being classified as independent contractors rather than employees. We have contracts with the writers, but some of the language is ambiguous. We don't need any challenges from the IRS.

Rony: We'll need access to data from your accounting system in the cloud. The IRS looks at numerous factors to make this determination, which means that we'll need to evaluate such aspects as payroll, equipment purchases, benefits, travel, and other expenses.

Robert: Wow! I didn't realize it was that multi-factored.

Rony: I'll put one of our senior tax people, Jordan, on the project.

The authors are indebted to Christine Cheng, Ann Dzurainin, Amy Igou, Kerry Inger, Brigitte Muehlmann, Tracy Noga, Gary Schneider, Theo Stratopoulos, Eileen Taylor, Valaria P. Vendrzyk (senior editor), Editor Michaela Morrow, two anonymous reviewers, and participants at sessions of the 2017 American Accounting Association (AAA) Annual Meeting, the 2018 AAA Accounting Information Systems (AIS) Midyear Meeting, the 2018 AAA AIS Data Analytics Bootcamp, and the 2018 AAA Intensive Data and Analytics Summer Workshop for insightful comments on this project, and to Haiyan Yan for assistance with data.

A. Faye Borthick and Lucia N. Smeal, Georgia State University, Robinson College of Business, School of Accountancy, Atlanta, GA, USA.

This project received the 2018 AIS Midyear Meeting Best Education Paper Award.

Supplemental materials can be accessed by clicking the links in Appendix A and Appendix B.

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Jordan: For sure, Rev. Rul. 87-41 and Treas. Reg. § 31.3401(c)-1 apply. There may be court cases, too. We'll analyze your data based on that authority.

Requirements

1. From the conversation and supplied data:
 - a. Identify risks that NewPub faces with regard to its classification of workers to determine whether workers now treated as independent contractors (ICs) are properly classified. To organize your work, review the factors in Rev. Rul. 87-41 and the definition of "employee" in Treas. Reg. § 31.3401(c)-1 to complete the table of possible risks in Exhibit 1. The first column is for numbering and naming the risks.
 - b. Develop analysis objectives for each factor.
 - c. For each factor for determining independent contractor (IC) status, complete the columns in Exhibit 1 to document the analysis. As models, the first two factor rows have been completed. The data to be analyzed are available in the file NewPubData.accdb. The data attributes are defined in Exhibit 2, and Exhibit 3 gives a business process diagram (BPD) that specifies the process that recorded the data in the accounting system. The agreements with the ICs are available in the file ICagreementsWithNewPub.docx.
 - d. Calculate an estimate as of September 15, 2016 of the potential amount due for each independent contractor job role (all workers in the role) and across all roles if the IRS were to declare NewPub not in compliance under the following assumptions applied to payments made to the ICs in 2015.
 1. NewPub filed Form 1099s for its independent contractors on January 31, 2016.
 2. The penalty for each Form W-2 not filed by August 1 is \$260 up to a maximum of \$1,072,500 for persons satisfying the gross receipts test (\$5,000,000 or less average annual gross receipts for the most recent three taxable years). NewPub satisfies the gross receipts test.
 3. Wage withholding is due at the rate of 1.5%.
 4. 20% of employee FICA taxes are assessed for:
 1. OASDI at 6.2% for the first \$118,500 of wages (2015 wage base).
 2. HI at 1.45% of wages with no maximum.
 5. 100% of employer FICA taxes are assessed for:
 1. OASDI at 6.2% for the first \$118,500 of wages (2015 wage base).
 2. HI at 1.45% of wages with no maximum.
 6. Wages up to \$7,000 per employee per year are subject to the Federal Unemployment Tax Act (FUTA), where credits for payments into state unemployment funds generally allow the FUTA rate to be 0.6% of wages.
 7. Late payment penalty of 0.5% of unpaid tax liability for each month.
 8. Other considerations associated with misclassification:
 1. Interest may be owed on the taxes due; however, interest may be waived in some circumstances if the employer corrects a misclassification.
 2. The IRS Voluntary Classification Settlement Program (VCSP) allows employers to voluntarily reclassify their workers to avoid interest and penalties.
 3. Intentional misclassification is subject to higher rates and criminal penalties.
 4. Back payments may be sought by state labor departments for unemployment insurance and worker compensation premiums.
 5. Back employee benefits, such as vacation and sick leave, health and life insurance, and retirement plan contributions may be sought by misclassified employees.
 6. An employer's reputation may be damaged by lawsuits initiated by employees.
2. [Optional] As your instructor directs, search for other authority pertaining to classifying workers as independent contractors.
3. Based on the completed data analysis report, prepare a memorandum to file that documents the data analysis results and their implications for compliance with independent contractor status.

Scope of Practice

The scope of this project is limited to identifying the risks that NewPub faces in its classification of workers as independent contractors (ICs). Performing this analysis requires (1) reviewing NewPub's agreements with its ICs only to identify the business practices that may favor the employee designation over IC status and not to give any opinion on nontax issues relating to contract law, and (2) querying accounts payable data to identify actual practices with respect to reimbursement and payment patterns that favor the employee classification over IC status.

Data Analytics in Tax Practice

Not very long ago, tax practice was mainly focused on compliance, i.e., ensuring that tax filings were accurate, complete, and timely, and much of the work was accomplished with spreadsheets. Advanced tax planning that was done was performed without the benefit of sophisticated modeling technology. But tax practice has undergone a transformative change, from after-the-fact data gathering, reporting, and filing to a role of maximizing the present value of after-tax income/cash. Because company-wide data are now accessible, tax accountants are expected to integrate the data to identify the tax implications of potential decisions before they are made. For example, because different countries tax companies differently, companies have opportunities to optimize the country locations of their supply chain, research and development, and finance functions.

The information architecture that enables data integration is the relational database system, whose data manipulations are coded in Structured Query Language (SQL) or derivatives of it. This means that the sooner you develop relational database skills, the sooner you can participate in tax work that requires tax analytics to advise companies on prospective decisions. The purpose of this case is to enable you to begin (or continue) the journey of acquiring database querying expertise. Microsoft Access, which implements a relational database system, offers most of the data operations available in industrial-scale enterprise system platforms that large companies use. The case features the use of the Query-By-Example (QBE) interface to Access, which enables specifying what data are needed without writing the SQL code yourself. Access generates the SQL code that it executes for a query from the queries you develop in the QBE interface. You can view the SQL code for each query, thereby taking a step toward developing the capability of writing your own SQL code. You could, of course, code the queries directly in SQL.

Because enterprise systems and analytic software that runs on top of enterprise systems are all based on the relational database model, everything you learn about relational databases with Microsoft Access carries over to these systems. Some proprietary software products, e.g., Tableau and Alteryx, layer on their own interfaces with visualization capabilities, but they are all relational database systems under their appealing covers. This case will enable you to develop relational database expertise that you use to begin making your career more productive with data analytics in accounting.

For further reading on the transformation in tax practice, see:

- Deloitte. 2016. *Tax Analytics: A New Era for Tax Planning & Compliance*. Available at: <https://www2.deloitte.com/global/en/pages/tax/articles/tax-analytics-a-new-era-for-tax-planning-and-compliance.html>
- PwC. 2015. *Data Driven: What Students Need to Succeed in a Rapidly Changing Business World: PricewaterhouseCoopers LLP*. Available at: <https://www.pwc.com/us/en/faculty-resource/assets/pwc-data-driven-paper-feb2015.pdf>

For guidance on mastering digital age competencies for accounting, see:

- Lawson, R., and D. Smith. 2018. How to master digital age competencies. *Strategic Finance* (September): 31–37. Available at: <https://sfmagazine.com/post-entry/september-2018-how-to-master-digital-age-competencies/>
- Lawson, R., and D. Smith. 2018. Developing data fluency. *Strategic Finance* (September): 68–69. Available at: <https://sfmagazine.com/post-entry/september-2018-developing-data-fluency/>

APPENDIX A

iace-52769_ICAgreementsWithNewPub: <http://dx.doi.org/10.2308/iace-52769.s01>

iace-52769_Exhibits 1-3: <http://dx.doi.org/10.2308/iace-52769.s02>

EXHIBIT 1

Report Template
Analysis of Agreements and Compensation Data for Independent Contractors (ICs)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications (Show specific numerical results in tables if there are more than a few numbers and a summary number would be inadequate.)
1 Instructions to worker Risk: Use of instructions, such as invoicing manuals, provided by employer	Determine whether the employer provides training and exercises control over the way the IC does the job. (See factors 1 and 2 in Rev. Rul. 87-41.)	Find agreement terms on training and invoicing.	Results: The agreements specify mandatory initial and periodic training for contributing editors, document acquisition specialists, special correspondents, and special blog contributors. The agreements also reference an invoice format guide. Implications: Review agreements and statements of work and modify them to limit mandatory training requirements and invoice specifications.
2 Training Risk: Training provided by employer	Determine whether the employer provides training. (See factors 1 and 2 in Rev. Rul. 87-41.)	1. Find training expense payments, if any, for independent contractors (ICs). a. In query 02-1 training, join Worker and Job tables on WorkCode; join Worker and WorkerItemizedAmount tables on WorkerID; and join WorkerItemizedAmount and PayItem tables on PayItemID. By default, Access creates these joins. b. Add PayItemID (with Criteria 12 or 16 or 17 or 18), two instances of ItemizedAmount, Status (with Criteria "IC"), WorkerID (with Sort Ascending), PayItemID, and PayItemName to the Design View. The result shows 715 instances of reimbursed travel-related expenses for ICs.	Results: From query 02-1 training, there were 715 instances of reimbursed training expenses for training expense-related pay items (12, 16, 17, 18). When grouped by PayItemID and WorkerID, there were 220 instances.

(continued on next page)

EXHIBIT 1 (continued)

Results and Their Implications

(Show specific numerical results in tables if there are more than a few numbers and a summary number would be inadequate.)

Analysis Strategy: Agreements and Compensation Data

Analysis Objective

IRS Risk Factor

- c. To group the expenses by PayItemID and WorkerID, open the Totals row and set the Total parameter for one instance of ItemizedAmount to Sum and set the other instance to Count. The result is 220 rows, where the expenses are grouped by PayItemID and WorkerID. (To revert to the result showing the 715 instances, close the Totals row.)

From query 02-3 trainingByPayItem, training expenses by PayItem were:

02-3 trainingByPayItem	PayItemID	PayItemName	SumOfSumOfItemizedAmount
	12	training - basePay	\$20,600.00
	16	training - airFare	\$41,778.00
	17	training - meals	\$10,710.00
	18	training - lodging	\$28,152.00

From query 02-4 trainingOverall, the total training-travel-related expense was \$101,240.

02-4 trainingOverall	SumOfSumOfItemizedAmount
	\$101,240.00

Implications: The company should renegotiate worker agreements to eliminate expense reimbursements for training travel-related expenses.

- d. With the Totals row open, save the query (Ctrl+S) with the name 02-1 training.
- 2. To sum the travel expenses by WorkerID (55 workers), create a new query with query 02-1 training in Design View with the attributes WorkerID and SumOfItemizedAmount, open the Totals row, and set the Total parameter for SumOf... to Sum. Save the query as 02-2 trainingByWorkerID.
- 3. To sum all travel-related expenses for ICs by PayItem, create a new query 02-3 trainingByPayItem with query 02-1 trainingByPayItemID in Design View with the attributes PayItemID, PayItemName, and SumOfSum... , open the Totals row, and set the Total for SumOfSum... to Sum.
- 4. To sum travel-related expenses overall, create a new query 02-4 trainingOverall with 02-3 trainingByPayItem in Design View with the attribute SumOfSumOf... Open the Totals row and set the Total to Sum, giving \$101,240.

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EXHIBIT 1 (continued)

Results and Their Implications

(Show specific numerical results in tables if there are more than a few numbers and a summary number would be inadequate.)

Analysis Strategy: Agreements and Compensation Data

Analysis Objective

IRS Risk Factor

<p>3 Integration into business operations Risk: IC work integrated into business operations and subject to employer direction and control</p>	<p>Determine the extent of integration of IC services into business operations and the extent of control over IC.</p>
<p>4 Services required to be rendered personally Risk: Personal performance required; employer interested in methods and results</p>	<p>Determine whether the company requires ICs to perform particular tasks themselves or if the IC is free to assign work to others.</p>
<p>5 Hiring, supervising, and paying assistants Risk: Employer paying ICs' assistants</p>	<p>Determine whether employer hires and pays for assistants or controls the ICs' assistants.</p>
<p>6 Continuity of the relationship Risk: Continuing relationship with work performed at regular intervals</p>	<p>Determine whether IC is a long-term worker and works regular hours over a long period.</p>
<p>7 Set hours of work Risk: Employer-determined hours of work of the IC</p>	<p>Determine whether the company sets the days and hours of work. Note: Data for this factor may relate to factor 12, payment frequency.</p>
<p>8 Full-Time Required Risk: Full-time work required</p>	<p>Determine how many hours the ICs work per week and whether they work full-time or overtime.</p>

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EXHIBIT 1 (continued)

Results and Their Implications

(Show specific numerical results in tables if there are more than a few numbers and a summary number would be inadequate.)

Analysis Strategy: Agreements and Compensation Data

Analysis Objective

IRS Risk Factor

<p>9 Working on employer's premises Risk: Performance of work on employer's premises</p>	<p>Determine whether ICs perform on-site services.</p>
<p>9A Providing office space Risk: Office space provided or reimbursed</p>	<p>Determine whether the employer provides an office for the IC or reimburses the IC for home office expenses. (See factors 9, 13, and 14 in Rev. Rul. 87-41.)</p>
<p>10 Setting work sequence Risk: Services performed in a certain pattern or sequence</p>	<p>Determine whether employer requires services to be performed in a set sequence.</p>
<p>11 Required oral or written reports Risk: Submission of regular reports by IC</p>	<p>Determine whether there are reporting requirements in contracts.</p>
<p>12 Payment by hour, week, month Risk: Payments made on an hourly, weekly or monthly basis; base pay guaranteed</p>	<p>Determine whether the employer pays ICs at regular intervals instead of based on the job completed and whether base pay is guaranteed. (See factors 7, 10, and 12 in Rev. Rul. 87-41.)</p>
<p>13 Payment of business or travel expenses Risk: Expenses reimbursed</p>	<p>See rows 13A and 13B.</p>

(continued on next page)

EXHIBIT 1 (continued)

Results and Their Implications

(Show specific numerical results in tables if there are more than a few numbers and a summary number would be inadequate.)

Analysis Strategy:
Agreements and Compensation Data

Analysis Objective

IRS Risk Factor

<p>13A Payment of travel expenses Risk: Travel expenses reimbursed (mileage and parking)</p>	<p>Determine whether the employer reimburses the ICs for travel expenses when news gathering or when ICs attend training sessions. (See factor 13 in Rev. Rul. 87-41.)</p>
<p>13B Payment of business expenses Risk: Office expenses reimbursed, including copy charges for documents</p>	<p>Determine whether the employer reimburses the ICs for office expenses, such as paper, toner, copy charges, paper clips, etc. (See factors 13 and 14 in Rev. Rul. 87-41.)</p>
<p>14 Furnishing tools, equipment, and materials Risk: Equipment provided by employer</p>	<p>Determine whether the employer provides equipment to the ICs or reimburses them for purchased equipment. (See factor 14 in Rev. Rul. 87-41.)</p>
<p>15 Reimbursement of IC office expenses Risk: ICs reimbursed for facilities they provided</p>	<p>Determine whether IC invests in their own work facilities. Data on reimbursed home office expenses may be helpful.</p>
<p>16 Realization of profit or loss by worker Risk: IC insulated from profit or loss</p>	<p>Determine whether ICs are guaranteed a profit and are insulated from losses.</p>
<p>17 Working for more than one business at a time Risk: IC prohibited from working for anyone else during contract duration</p>	<p>Determine whether ICs work for others or if company restricts contractors' ability to work for others.</p>

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EXHIBIT 1 (continued)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications
18 Making services available to the general public Risk: IC prohibited from making services available to the general public	Determine whether worker regularly makes services available to the public.		(Show specific numerical results in tables if there are more than a few numbers and a summary number would be inadequate.)
19 Firm's right to discharge Risk: Employer can dismiss IC for causes other than failure to produce results	Determine whether the company can discharge the worker at will.		
20 Worker's right to terminate Risk: IC with no right to end relationship at any time without liability	Determine whether the worker can terminate the contract at will.		
Other (Tax Court additional factor) Risk: Employee benefits provided to ICs	Determine whether the employer provides employee benefits (Rev. Rul. 75-41 in Rev. Rul. 87-41.)		
Potential employment taxes due and penalties for misclassification	Based on the provided assumptions, calculate the potential amounts due for each IC job role (all workers in the role) and across all roles if the IRS were to classify the ICs as employees.		

Exhibit 1, in its original version with color graphics, is available for download, see the link in Appendix A.

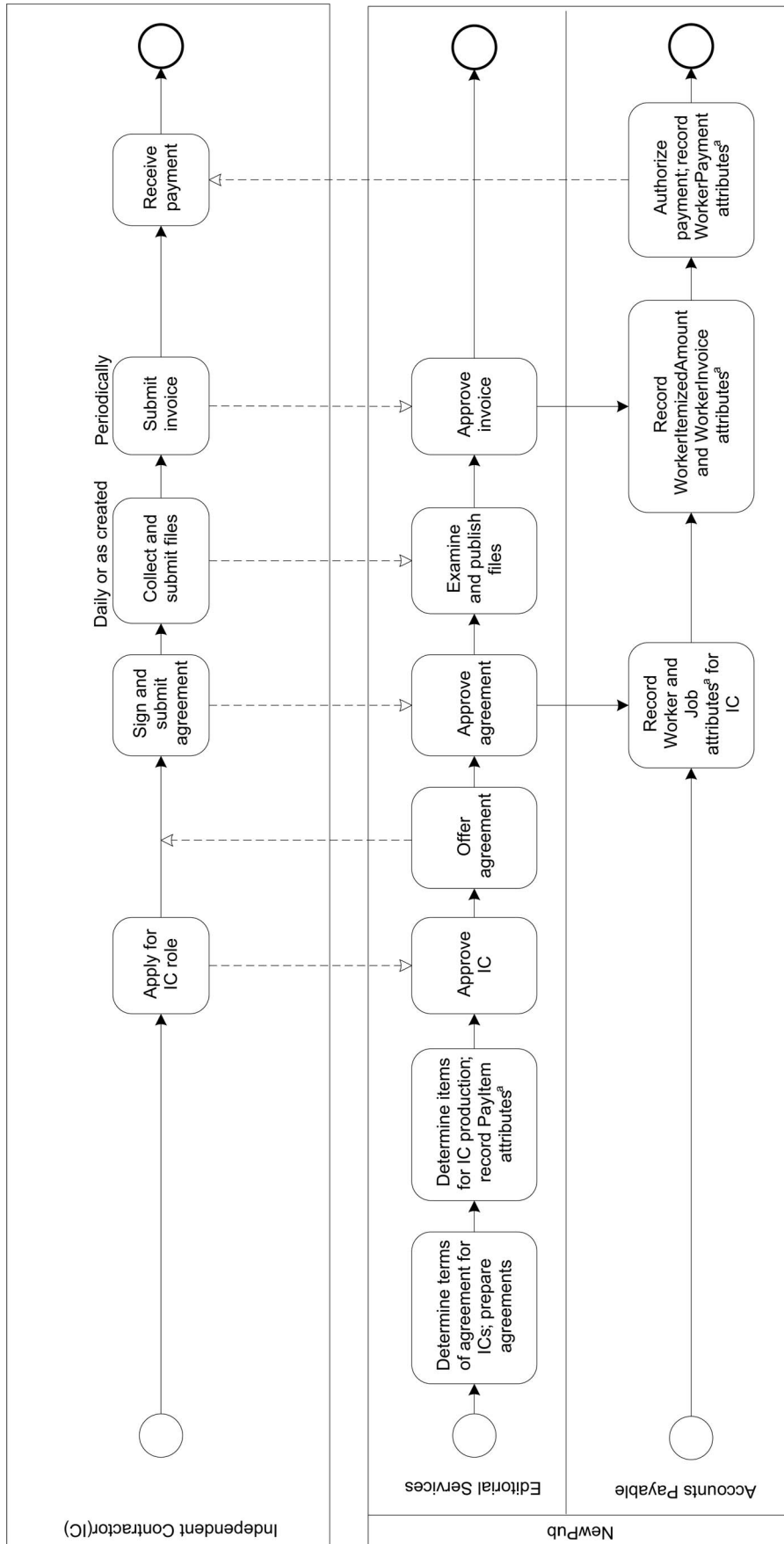
EXHIBIT 2
Data Attributes

Table/Attribute ^a	Definition of Attribute
Worker: Person performing work for hire	
WorkerID	Unique identifier for a worker.
WorkCode	Unique identifier for a work role, defined in the Job table.
HireDate	The date the worker was hired.
EndDate	The last day of work.
City	Home city of worker.
State	Home state of worker.
Job: Work role for worker	
WorkCode	Unique identifier for a type of work. A worker has only one WorkCode.
Role	Name of the work role.
Status	Work role status: "E" for employee, "IC" for independent contractor.
PayItem: Items for which workers are paid	
PayItemID	Unique identifier for a PayItem.
PayItemName	Name of PayItem.
PayItemDescription	Description of PayItem.
PayItemRate	Rate at which worker is paid for the item.
VariableRate	Qualifications on variable rates.
WorkerItemizedAmount: Itemized amounts in a worker's invoice	
ID	Generated unique identifier for a worker's itemized amount on an invoice.
WorkerID	Unique identifier for a worker.
WorkerInvoiceID	Worker's identification of an invoice the worker submits.
PayItemID	Unique identifier for a PayItem.
Quantity	Quantity of the PayItem on a worker invoice.
UnitPay	Pay for one PayItem.
DatePerform	Date worker performed the service.
ItemizedAmount	Product of Quantity and UnitPay.
WorkerInvoice: Worker invoice summary	
InvoiceID	Unique identifier for an invoice submitted by a worker.
WorkerInvoiceID	Worker's identifier for an invoice the worker submits.
WorkerID	Unique identifier for a worker.
WorkerInvoiceDate	Date a worker's invoice was received.
WorkerPayment: Payment to a worker	
DirectDepositRequestID	Unique identifier for a direct deposit payment to a worker.
InvoiceID	Unique identifier for an invoice submitted by a worker.
WorkerID	Unique identifier for a worker.
WorkerInvoiceID	Worker's identification of an invoice the worker submits.
PaymentDate	Date payment was requested.
PaymentAmount	Amount paid to the worker.

^a Table names and primary key attributes in bold.

Exhibit 2, in its original version, is available for download, see the link in Appendix A.

EXHIBIT 3
Business Process Diagram (BPD)
NewPub Publishing and Independent Contractors (ICs)



^a Definitions of recorded attributes appear in Exhibit 2. Data tables contain the attributes recorded. Exhibit 3, in its original version, is available for download, see the link in Appendix A.

II. CASE LEARNING OBJECTIVES AND IMPLEMENTATION GUIDANCE

Learning Objectives

In this case, students combine tax research with analysis of data from accounting records to evaluate the risk a company might have in misclassifying workers as independent contractors where the Internal Revenue Service (IRS) would likely classify them as employees. The classification matters because companies owe employment-related taxes for employees, while independent contractors are responsible for their own employment taxes. The case simulates an engagement in which accountants help a new business identify risky employment practices and correct them before being audited by the IRS. To complete the case, students use tax research skills to gain knowledge of the employee versus independent contractor rules (Rev. Rul. 87-41 [IRS 1987] and Treas. Reg. § 31.3401(c)-1 [U.S. Department of the Treasury 2015]) and use data analysis skills to detect the existence of transactions that indicate certain workers might be misclassified by the company. The specific learning objectives are for students to:

1. Perform tax research to identify the factors relevant to the IRS's classification of workers as employees or independent contractors.
2. Analyze agreements with workers and data from a client's accounting system that reveal its employment and payment practices to assess consistency with the IRS's factors.
3. Estimate employment taxes and penalties due by calculating them based on specified assumptions.
4. Complete a memorandum that documents the findings from the analyses.

The Evolving Tax Function

Tax accountants have commonly used software to compile records and translate that information into a tax return filing. Deloitte (2016) characterized the traditional tax function as gathering data from various business systems, using it to solve problems and find answers, and then delivering the information as return filing or reports, noting that most tax software is compliance-oriented instead of analytics-focused. However, the traditional view of the tax function is changing in order to maximize the present value of after-tax income/cash. Deloitte suggested a shift from hindsight to insight and foresight, through "querying the data to understand how different aspects of the business affect tax outcomes, or modelling correlations in past data to understand what drives tax outcomes" (Deloitte 2016, 3). Companies are turning to business analytics to find the right data to foster compliance and to avoid penalties and audits (Blanchard 2014). EY (2014) observed that analytics can be used in all aspects of tax practice. Although the tax function has been called a late analytics adopter, analytics can be used to examine tax items to understand the potential for errors as well as the audit risk created by those errors (Deloitte 2016).

The business press has addressed the need for members of the accounting profession to acquire and use data analysis skills in tax practice, but some authors are skeptical of how well and how fast this can be done. Accounting professionals may not be keeping up with the influx of data and the need for analytic skills (Katz 2014; Tschakert, Kokina, Kozlowski, and Vasarhelyi 2016). In an evaluation of the role of tax executives, Levin-Epstein (2015) explained that the analytics and insights provided by effective uses of tax technology can elevate the role of tax professionals. Blanchard (2014) encouraged using data analytics to find opportunities for reducing high corporate taxes, and Klimek (2014) described data analysis for identifying factors used in formulary apportionment, i.e., allocating profits according to value creation. To make sense of the labyrinthine tax code, companies need to have the most current tax research and use business analytics tools to get accurate and complete data for tax compliance (Blanchard 2014).

Tax Authorities' Use of Data Analytics

Accountants need to master data analysis techniques in order to keep pace with tax authorities, who have greatly expanded their use of data analytics to identify noncompliance and increase government revenues. Tax authorities are getting smarter in their use of analytics (EY 2014), and regulators may even be ahead of companies in use of analytics in tax (Deloitte 2016). Companies could stay ahead of government regulators by using similar analyses to identify potential audit areas (Levin-Epstein 2015).

Tax authorities have broad authority to obtain a business's electronic data records when conducting an audit (Marchbein 2018). In 1998, the IRS formulated a set of rules that require business taxpayers to maintain computer records and to be ready to produce them in an audit if the IRS issues an Information Document Request (IRS 2014). The IRS employs Computer Audit Specialists (CASs)—revenue agents with special training in computer technology and auditing techniques—to analyze complex computerized accounting systems and large volumes of data when auditing taxpayers

(IRS 2002). Further, the Internal Revenue Manual states that one aspect of the role of CASs is “designing, independently, applications using both standard and custom computer programs, and searching continually for creative and innovative ways to use computer assisted auditing techniques” (IRS 2002, IRM § 4.47.1). Thus, the IRS is going beyond use of data analytics in audits to more strategic use in decision making. For example, the IRS is using data tools to diagram the structure of transactions, detect fraud, and create audit trails from business receipts data (Harbert 2012). Accounting students who elect to pursue tax practice need to be able to perform similar evaluations of client data in advance of an IRS audit in order to understand clients’ exposure to negative tax outcomes. Knowledge of data analytics can greatly improve this process, a view that PwC (2015) has articulated to students.

Developing Data Skills in Accounting Students and Faculty

To prepare for these changes in tax practice, accounting students and faculty will need to be equipped not only with knowledge of tax return software and spreadsheet skills, but also with more advanced analytical skills such as expertise in database querying, moving from an Excel-based world to database-driven applications (Levin-Epstein 2015). In urging faculty to integrate data analytics into accounting course work for all accounting areas, PwC (2015) observed that tax has historically lagged behind in technology, but is now experiencing transformative change. As businesses expand and tax laws change, integrating and analyzing larger datasets will be essential. Students interested in a career in tax practice will have to learn where critical data reside and how to map that data against tax rules to create tax-structured databases (PwC 2015). The tendency of tax accountants “to sit in a silo, apart from the organization as a whole . . . can no longer continue” (Gamage 2016, 598). Recognizing the importance of data analytics skills as preparation for careers as accountants, AACSB included the first requirement for data analytics as Standard A7 in the 2013 Accounting Standards (AACSB 2013) and continued the emphasis in the 2018 Eligibility Procedures and Accreditation Standards for Accounting Accreditation as Standard A5 (AACSB 2018). Franklin, Morrow, and Novak (2020) discussed how data analytics have evolved in the tax function, citing resources that would be helpful in infusing tax curricula with data analytics.

The guidance in the Teaching Notes assumes no prior knowledge of database querying on the part of students or faculty using this case. Thus, potential faculty users of the case could teach themselves to perform the querying from the guidance in the Teaching Notes before assigning the case to students. As they work the case, instructors can gain insights for configuring it for their learners.

IRS Stance on Worker Classification

Worker classification has become a priority area for the IRS, and many of the 20 factors for employee versus independent contractor status (IRS 1987; U.S. Department of the Treasury 2015) can be tested using database querying of payroll information, accounts payable, and other business data. As part of its National Research Program, the IRS undertook an audit of 6,000 firms in 2010 to test for employment tax compliance in a major initiative to curb the misclassification of employees as independent contractors (Social Security Administration 2010). Using patterns of information gleaned from those audits, the IRS has maintained a far-reaching program to identify misclassification of workers and to force businesses into compliance (IRS 2014). The issue of employee classification has been a constant battleground between the IRS and employers (Keligian 2011). IRS audit guides, which are issued to provide specialized techniques for different industries, typically require agents to examine independent contractor issues in any standard payroll tax audit (Rettig 2011). To prepare for an employment tax audit, Weissman (2009) suggested performing an internal audit in advance and conducting a factual and legal analysis of the issues, including reviewing all relevant documents.

As the IRS states on its website:

There is no “magic” or set number of factors that “makes” the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors that are relevant in one situation may not be relevant in another. The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination. (IRS 2016)

This case calls upon tax students to do this comprehensive type of evaluation by incorporating database querying of compensation data to document business practices at issue for worker classification.

Performing an internal audit in advance gives employers the opportunity to voluntarily correct any worker misclassification they find by entering the IRS’s Voluntary Classification Settlement Program (VCSP) (IRS 2012b). Employers that enter the program and agree to properly reclassify their workers going forward pay a reduced amount of back taxes and are not subject to the penalties that apply if the IRS first initiates an employment tax audit (IRS 2012a).

Implementation Guidance

Scaffolding to Support Learning in Learners' Zone-of-Proximal Development (ZPD)

Because analyzing company data with querying is relatively new in tax cases, it is likely that at least some learners will have difficulty with some of the learning objectives. To make it possible for learners to achieve learning objectives that they could not accomplish on their own, the case offers a range of scaffolding (Wood, Bruner, and Ross 1976; Reiser and Tabak 2014; Abraham and Jones 2016) to enable learners to eliminate the gap between their existing capabilities and what they need to learn to do on their own (Rogoff 1990). Just like the scaffolding for a building under construction, scaffolding for learning enables learners to develop skills for performing tasks independently in the future (Vygotsky 1978, 1986; Borthick, Jones, and Wakai 2003; Abraham and Jones 2016). Instructors can match their learners' zone-of-proximal development (ZPDs) (Vygotsky 1978, 1986), i.e., what learners can do unaided, to the scaffolding choices included in case materials.

We encourage instructors to configure the scaffolding to avoid cognitive overload (Sweller 1988; Sweller and Chandler 1991). In cognitive load theory, the intent is to minimize the cognitive load in order to maximize the development of the mental schema for accomplishing analogous tasks in subsequent situations (Paas, Renkl, and Sweller 2004; Rikers, van Gerven, and Schmidt 2004).

Configuring the Scaffolding for the Case: Matching to Learner Proficiency

The case materials offer a range of scaffolding choices, and thus enable instructors to tailor the scaffolding for learning to their students' zone-of-proximal development (ZPD) in tax research and database querying. The availability of a range of scaffolding makes it possible for the case to be worked by learners with either (1) little tax research and/or database querying skills (they get all the scaffolding materials with only a few of the requirements), (2) moderate tax research and database querying skills (they get selected portions of the scaffolding and more of the requirements), or (3) extensive tax research and database querying skills (they might get only the conversation and data file but all the requirements.) Furthermore, the database querying can be assigned to students with no requirement for tax research, e.g., for courses in accounting data analytics or IT auditing.

The first step in configuring the case for a specific set of learners is for the instructor to work through the requirements for tax research and database querying. We recommend that instructors with no database querying experience do the querying for Factor 2 as they view the videos or the text/screenshots (see Appendix A in the Teaching Notes) and then perform the rest of the querying by following the guidance in Figure 1 in the Teaching Notes. The videos and text/screenshots were created with Access 2016. Earlier versions of Access may have slight differences in presentation that do not affect the querying. Once they have developed sufficient querying expertise to assess its cognitive demands, instructors can use Table 1 as guidance for configuring the case for their learners. Tailoring the scaffolding and requirements to the learners creates the opportunity to maximize the learning gains in tax research and database querying. Table 2 gives time estimates for case requirements so instructors can configure their use of the case to fit the time they wish to devote to it.

Offering a range of scaffolding choices is intentional on the authors' part because it enables instructors and learners to evolve their tax research and database querying skills over time, thereby extending the time horizon for case usefulness. Instructors' first uses of the case might bestow access to several scaffolding case materials; the instructor evaluates the learning that ensues and refines the scaffolding choices for the next use of the case. Especially with respect to database querying, learners are likely to enter tax research courses with increasing skills over time. As this occurs, instructors can offer fewer scaffolding resources for database querying. The case can be segmented to enable students to realize the need to query the accounting data and examine the worker agreements. For example, students could be assigned the analysis of the accounting data through querying first, followed by a class discussion of the implications of the querying results. Then, students could examine the worker agreements and integrate the results of the data analysis and examination of the worker agreements.

The first phase in configuring the case to a group of learners is to assess their proficiency in tax research. Are they or are they not experienced in tax research? Given course objectives, should students be required to search for other relevant authority on their own? If learners will be required to search, should they be given search guidance? (Guidance is available in the Teaching Notes.) Is their experience extensive enough that they need none of the scaffolding? Faculty members teaching tax research courses likely already have answers to these questions based on their experience with former and current students.

The second phase in configuring the case for learners is to assess their proficiency with database querying. Do they have any experience whatsoever? Was their prior experience rudimentary and likely long enough ago that they have forgotten the experience? Was their experience recent, i.e., in the prior term's accounting information systems or business analytics courses? What querying did students actually do in the upstream courses? Have learners queried databases on the job, e.g., internships? Are the learners eager to develop querying skills because they believe they would be beneficial in their careers? The fast transformation that tax practice is undergoing from a spreadsheet-based world to database-driven applications (Levin-Epstein 2015) has surprised some students. For their career prospects, students need to be aggressive in acquiring database skills.

TABLE 1
Configuring Scaffolding to Match Learner ZPDs for Tax Research and Database Querying

		Configurable Materials ^{a,b}									
Conversation, BPD Data, Attributes	Worker Agreements	NewPubData.accdb file	Report Template Factor 2		Directions for Authority Searching	MP4 Videos and/or Script Factor 2	Selections from Figure 1 Teaching Notes	Querying Quiz			
			Worked	Not Worked							
Learner Proficiency Level: Tax Research and Database Querying											
1	Beginner in tax research; no/little query skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
2	Moderate tax research skill; no query skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
3	Moderate tax research skill; moderate query skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
4	Moderate tax research skill; advanced query skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
5	Advanced tax research; no query skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
6	Advanced tax research; moderate query skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
7	Advanced tax research; advanced query skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Learner Proficiency: Database Querying (for querying only)											
1	No or little querying skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
2	Moderate querying skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
3	Advanced querying skill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

^a We recommend giving all but the most advanced learners the report template with Factor 2 worked because it illustrates the level and form of documenting the querying. Without the template, learners, especially beginners, tend to omit essential aspects of the analyses based on the worker agreements and the compensation data. The querying quiz can be used with learners at any initial skill level as an independent assessment of querying capability. Using it avoids having to open query files to assess querying and enables students to collaborate on the querying honestly.

^b Instructors may choose to offer students selected guidance from Figure 1, Teaching Notes, for data analyses they believe would be overly difficult for their students.

TABLE 2
Task and Elapsed Time Estimates for Requirements^a

Requirement	Task Time ^b	Elapsed Time ^c
1 Conduct tax research beyond authorities cited	2 hours	2 days
2 Analyze worker agreements; complete report cells	3 hours	1 day
3 Perform Factor 2 querying from videos or script with screenshots	1 hour	1 day
4 Query for factors with data; complete report cells	3 hours	3 days
5 Query to calculate estimates of potential tax liability and penalties	3 hours	2 days
6 Prepare memorandum to file	4 hours	2 days
7 Verify that analysis results and memo text harmonize	1 hour	1 day

^a In graduate tax research courses without calculating estimates of potential tax liability and penalties, the typical time for the case has been two weeks, including an hour in class at the beginning of work on the case.

^b Task time is the time a learner actually spends on the task.

^c Elapsed time is the period, e.g., days, over which it is productive for learners to have opportunities to reflect on the tax research and database querying to develop the mental schema for subsequent tax research and data analytics projects (Eagleman 2019).

Quiz for Assessment of Querying

The ten-question quiz in the Teaching Notes can be used as an in-process formative assessment of students' mastery of the querying or as a summative assessment of querying for the case. As a formative assessment, quiz results let students know whether they understand enough of the querying for their analyses to be valid. As a summative assessment, the quiz affords instructors a measure of querying proficiency without having to open each student's query file. When first using the case, instructors may want to inspect and grade queries. But grading queries is time consuming even when students work in groups. Furthermore, instructors may observe unauthorized collaboration within- and across-terms. With the independent assessment of querying afforded by the quiz, instructors can encourage students to work together on the querying.

Uses in Courses

The case has been used by four instructors in three large public universities in undergraduate tax, graduate tax, and graduate IT auditing courses. In the tax courses, the case was assigned as a small group project, and in the IT auditing course, as an individual assignment. Instructors employed a variety of approaches to ensure that students had the requisite querying skills, from developing them in prior or companion courses to relying on guidance supplied as part of the case. For all courses, students received directions for the first query set (IRS Factor 2), which appears in the report template as a model to indicate the kind and form of intended reporting of analysis results (please see the link to "Exhibit 1 case report template" in Appendix B). Students in the tax courses analyzed the contents of two sources: text of NewPub's agreements with its ICs and data tables from NewPub's accounting system containing compensation paid to ICs, made available in a 5.6 megabyte file in Microsoft Access[®] in the Teaching Notes.

Teaching Notes Contents

The teaching notes for instructors include:

1. Discussion of (1) the difference between an independent contractor and an employee and (2) the risks of misclassification.
2. Directions for selecting search terms, using the terms to search for relevant tax authority, and evaluating the applicability and significance of search results.
3. Exhibit 1: A completed analysis of IC agreements and compensation data.
4. A memorandum to file with the analysis results.
5. A set of ten multiple-choice questions for assessing student understanding of the querying, which can be used in lieu of marking student database files with queries.
6. Links to files containing:
 - a. A Word file with the IC agreements with NewPub.
 - b. A Word file of Exhibit 1 for the Case: Report Template: Analysis of Agreements and Compensation Data for Independent Contractors (ICs). This file has only the rows for the first two factors completed.

TABLE 3
Student Perception of Difficulty of Case Aspects

Order	Aspect	Mean by School ^a			Overall Mean
		1 n = 82	2 n = 60	3 n = 40	
1	Deciding which IRS factors required querying the data file	4.05	3.05	3.70	3.60
2	Translating IRS factors to potential query objectives	2.83	2.77	3.03	2.87
3	Identifying and finding the data attributes needed to construct queries	3.32	2.90	3.18	3.13
4	Matching my conception of the data attributes needed to construct queries to the attributes in the database	2.15	2.73	2.30	2.39
5	Constructing queries	3.59	2.95	2.73	3.09
6	Realizing when queries were complete and correct	3.27	2.32	2.70	2.76
7	Stating query results succinctly in the context of an IRS factor	3.38	2.85	3.18	3.14
8	Developing implications of query results in terms of compliance (or noncompliance) with an IRS factor	3.25	3.12	3.50	3.29

^a Scale endpoints: 1 = hard and 5 = easy.

- c. A Word file of Exhibit 1 for the Teaching Notes: Report Template: Analysis of Agreements and Compensation Data for Independent Contractors (ICs). This file has all rows for all factors completed.
- d. The Access accdb data file with the compensation data: NewPubData.accdb.
- e. A complete Access accdb file with all queries: NewPubAnalysis.accdb.
- f. Two MP4 video files (25 minutes altogether) with voice narration of getting started in Access and querying for IRS Factor 2 in Microsoft Access®. The content of the MP4 files follows the script with screenshots version. The videos reveal the process of learning to query a relational database, not just the end product (Lento 2017).
- g. A Word file with a script with screenshots illustrating the querying and query results in Microsoft Access® for the analysis for IRS Factor 2. The script assumes no prior knowledge of Microsoft Access®.
- h. A Word file with ten multiple choice questions for assessing students' proficiency.

How the Case Has Been Used

The case can be used several ways depending on students' proficiency in tax research and database querying. In the undergraduate tax course at school 1, students received the report template with the Factor 2 row completed, two forms of detailed directions for getting started in Access and performing the querying for Factor 2 (MP4 files and a text script with screenshots for getting started in Access and performing the querying for Factor 2), directions for querying for the other IRS factors for which data existed in the database, and supplemental documentation for creating the queries for Factor 6.

At school 2, the graduate tax course was taught in concert with an advanced accounting information systems course in which students developed querying skills. These students received the report template with the Factor 2 row completed and the text script with screenshots for Factor 2 querying.

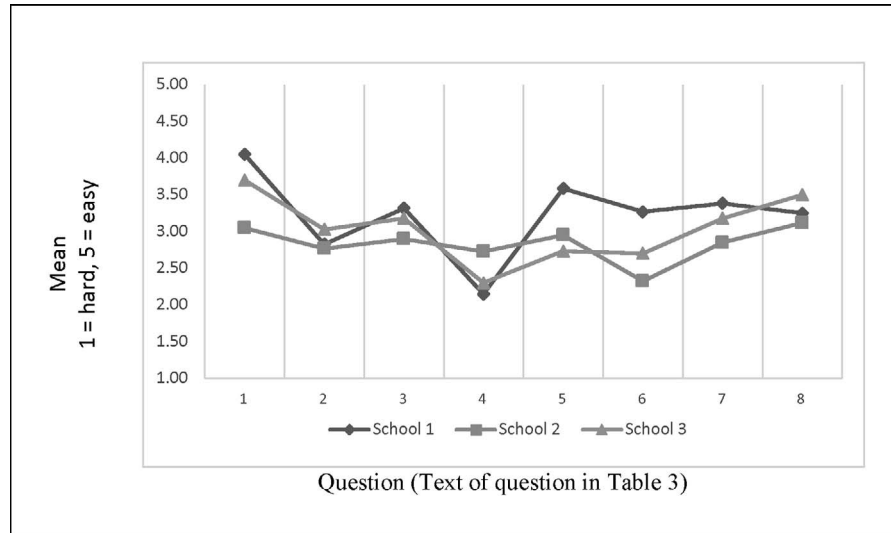
At school 3, graduate tax research students received the report template with the Factor 2 row completed and the text script with screenshots. In the graduate IT auditing course at school 3, students received only the report template with the Factor 2 row completed and only queried the compensation data without examining NewPub's agreements with its ICs. Earlier in the IT auditing course, students worked through a guided learning experience in querying (Borthick, Jones, and Kim 2001). At school 3 (tax research and IT auditing), the multiple-choice questions were used as an independent assessment of students' querying abilities.

Case Validation

Student Performance. Mean scores for the complete case (data analysis and memorandum to file) have been in the range of 84–86 percent. Mean scores on the multiple-choice questions have been in the range of 82–84 percent.

Student Reaction. Students in the undergraduate and graduate tax courses responded to questions about their experience with the case (Table 3) where the endpoints of the scale were 1 (hard) and 5 (easy). The endpoints were reversed for some questions, that is, some questions had “hard” as the first choice while other questions had “easy” as the first choice. The variation within student responses was consistent with students' heeding the wording differences across the questions.

FIGURE 1
Student Response Means by School



Across the three schools, the easiest aspect (mean = 3.60) was “Deciding which IRS factors required querying the data file.” The hardest aspect (mean = 2.39) was “Matching my conception of the data attributes needed to construct queries to the attributes in the database.” Next hardest was “Realizing when queries were complete and correct” (mean = 2.76). With three means below and five means at or above the midpoint (3.00, “neither easy nor hard”), students seemed to be saying they found the case to be challenging and effortful, but not beyond their grasp. Question means by school are graphed in Figure 1.

Students at the three schools responded to a subsequent question “If I had difficulty constructing queries that worked, it was a function of. . .” and picked all the items from the list that they wished. Collectively, the students chose all the potential difficulties. Table 4 shows the mean proportions making each selection by school and overall, and Figure 2 graphs the proportions by school. The choices were presented in the order they would have been encountered while working on the case. On an overall basis, the most frequent difficulties were “Failing to recognize when a query did not give the intended results” (41 percent) and “Not realizing how to map the IRS factors onto the data attributes” (36 percent). The least frequently chosen difficulties were “Not having enough time to understand or finish all the queries” (8 percent) and “Not understanding how the compensation data related to the IRS factors” (17 percent).

Because they had access to the text script and the MP4 video files for querying for IRS Factor 2, students at school 1 were asked about their format preference. Sixty-seven percent of the students (undergraduate tax, $n = 82$) said they viewed the video files first, and 70 percent said that if they could only have one format, it would be the video. Table 5 gives some representative comments from video-preferring and script-preferring students. In explaining their preference, the video-preferring students indicated that following the querying from the narrated animation was easier than getting the same content from text with screenshots. Some also said they were visual learners. The script-preferring students explained their preference by saying that viewing the text was faster and permitted going at one’s own pace, bypassing already understood aspects. Some also said that the video was too slow, not realizing that the video could be viewed at 1.5 times the recording speed with no loss of fidelity. The desire to bypass already understood aspects illustrates the redundancy effect (Kalyuga, Chandler, and Sweller 1998) in which the presence of already mastered content imposes an unnecessary cognitive load (Kalyuga, Chandler, Tuovinen, and Sweller 2001).

Students at all three schools responded to the open-ended question “What career role do you envision for the tax research and data analysis skills you learned with NewPub?” A sample of the responses appears in Table 6. For the most part, the responses indicated the students valued having developed the kind of tax research and data analysis skills that tax, accounting, and audit professionals would need in their careers. Only a few responses indicated skepticism about the skills.

III. SUMMARY

The contribution of the case is a learning experience for integrating tax research and data analytics to assess compliance with federal tax law or as a standalone querying experience. The case has been used in undergraduate and graduate tax and

TABLE 4
Student-Indicated Difficulties in Querying By School: Multiple Items

Item Order ^a	Difficulty	Proportion Selecting By School			Overall
		1 n = 82	2 n = 60	3 n = 40	
1	Not being able to recognize that the data file contained data relevant to a specific factor	20%	20%	13%	18%
2	Translating the risk of the transaction data not complying with an IRS factor into a query objective	18%	33%	28%	26%
3	Not realizing how to map the IRS factors onto the data attributes	28%	37%	43%	36%
4	Not understanding how the compensation data related to the IRS factors	11%	25%	15%	17%
5	Developing queries from query objectives	23%	23%	40%	29%
6	Not understanding how to use the Group By operator to create sequences of queries that progressively summarized the results	18%	7%	35%	20%
7	Not configuring joins correctly	15%	12%	40%	22%
8	Not understanding how to set criteria, e.g., “IC” on the Status attribute or 14 or 15 on [PayItem] attribute	26%	7%	20%	18%
9	Debugging queries that have only minute errors	29%	33%	25%	29%
10	Failing to recognize when a query did not give the intended results	37%	48%	38%	41%
11	Not having enough time to understand or finish all the queries	7%	7%	10%	8%

^a Sequence of the potential difficulties in the survey list, in the order they would have been encountered in working on the case.

graduate IT auditing courses. The case draws on the database querying skills of joining tables, using Group By, setting criteria, and creating expressions. Students begin the case by developing an analysis plan from a brief conversation revealing the tax compliance concerns of a new business. Then, they develop database queries to identify business practices germane to distinguishing between the classification of workers as independent contractors or as employees, based on the 20 factors the IRS applies to determine compliance with Rev. Rul. 87-41 (IRS 1987) and the definition of “employee” in Treas. Reg. §

FIGURE 2
Student-Indicated Difficulties in Querying By School

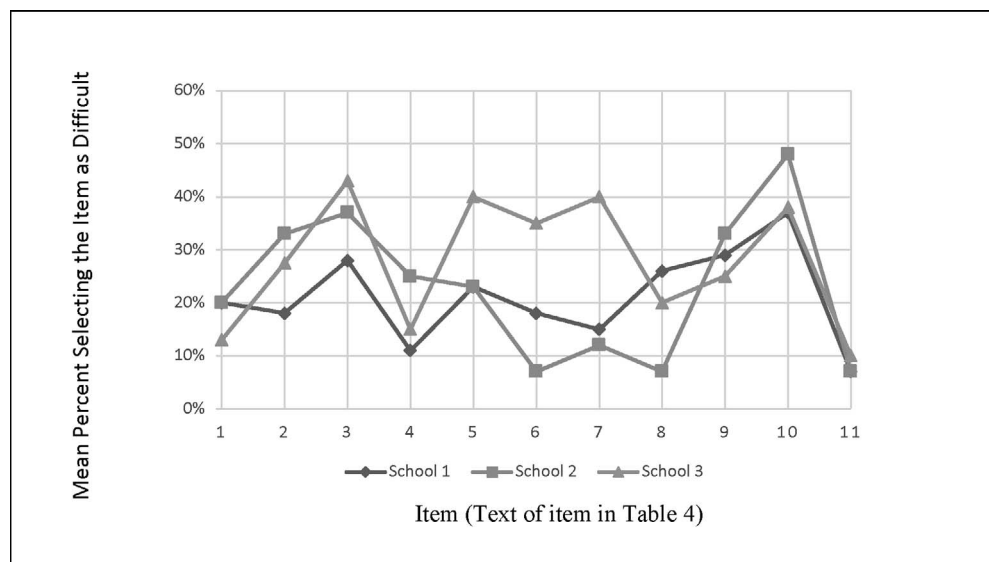


TABLE 5
Representative Student Responses to:
“Why do you prefer the script/screenshot or video format?”^a

Panel A: Students Preferring Video: 70 Percent of Respondents

Number	Response
1	The script was better if I understood what I needed to do because it was quicker. The videos were great when I didn't understand something.
2	I liked seeing how to create a query step by step rather than trying to understand the language in the instructions.
3	I just found it easier to learn when having someone explain the material to me. I thought the videos, while slow, gave very clear directions.
4	It can be difficult to understand text at times.
5	It showed exactly what I need to do and where it was. I could follow along simply by watching the mouse move.

Panel B: Students Preferring the Script with Screenshots: 30 Percent of Respondents

Number	Response
1	The videos dragged on and didn't get to the point as efficiently as the script did.
2	Text is better because you can move at your own pace.
3	I could go at my own pace through the info. The videos, while detailed, were rather slow.
4	You can actually see the exact step by step to follow.
5	I found the text to be very straight forward and to the point.

^a The responses are based on 40 minutes of viewing in three segments. Based on student and reviewer feedback, the videos were re-recorded into 25 minutes of viewing time in two segments. The Teaching Notes link to the two-segment 25-minute version.

31.3401(c)-1 (U.S. Department of the Treasury 2015). Students must first perform tax research to understand the way tax laws and regulations are applied to worker classification cases. Students review the company's agreements with workers to identify terms that may put the independent contractor status at risk and to decide which IRS factors require querying company data. In comparing the company's agreements with actual practice, represented by the compensation paid to the independent contractors in the accounting data, students realize that the business practices documented in the worker agreements may be inconsistent with actual practice.

When performing the queries, the students discover that the queries for different factors are similar. The similarity allows the first query set to be replicated and then edited to make the data source and criteria apply to other factors. Students must also identify factors that are not represented in the data and make recommendations on alternative methods to measure the company's practice on these factors. Thus, the case requires students to develop alternate approaches to assessing the IRS's 20 factors for determining independent contractor status. The use of different approaches gives them practice in analyzing the relevant tax authority, business documents, and compensation data from an accounting system. Finally, students must document their findings and recommendations in a professional file memorandum. The case involves a comprehensive evaluation of a tax problem of classifying workers as independent contractors or employees, and includes querying compensation data to document relevant business practices.

TEACHING NOTES AND STUDENT VERSION OF THE CASE

Teaching Notes and the Student Version of the Case are available only to non-student-member subscribers to *Issues in Accounting Education* through the American Accounting Association's electronic publications system at <http://aaapubs.org/>. Non-student-member subscribers should use their usernames and passwords for entry into the system where the Teaching Notes can be reviewed and printed. The “Student Version of the Case” is available as a supplemental file that is posted with the Teaching Notes. Please do not make the Teaching Notes available to students or post them on websites.

If you are a non-student-member of AAA with a subscription to *Issues in Accounting Education* and have any trouble accessing this material, please contact the AAA headquarters office at info@aaahq.org or (941) 921-7747.

TABLE 6

**Representative Student Responses to the Question:
“What career role do you envision for tax research and data analysis skills you learned with NewPub?”**

Panel A: School 1: Undergraduate Tax Course

Number	Response
1	NewPub taught me how to confidently and efficiently research tax law and it gave me a good base for Access.
2	I think the skills I learned will provide me an edge in understanding possibilities and areas that others haven't had experience in.
3	The skills will help to quickly prove an argument in future projects with lots of data.
4	Access skills can be applied in any part of the accounting profession.
5	I want to join an audit practice. So using data analysis skills could help me tremendously!

Panel B: School 2: Graduate Tax Course

Number	Response
1	The experience of collecting and using data from multiple sources to complete a task to a conclusion is very realistic.
2	When working with data, I think this will be a huge help in discovering what we need to find as efficiently as possible.
3	Utilizing data to support IRC Code Sections. It is helpful for clients to be able to see some numbers rather than quotes from the IRC.
4	It helped me understand how to connect large amounts of data and to achieve different objectives.
5	Although I'll be doing tax research, I doubt I'll use the Access data analysis skills very often.

Panel C: School 3: Graduate Tax Course

Number	Response
1	Being able to use basic Access function will help me with any job in finance or accounting.
2	I learned to apply authoritative literature to a client's situation.
3	I believe all of us will encounter situations where we will have to analyze both data and authority.
4	I can see that with data results presented, findings/research can be more convincing. Data are absolutely a good source of proof/defense for our tax position.
5	The tax research will be very helpful but the Access skill will probably not be especially useful.

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APPENDIX B

Exhibit 1 Case Report Template: <http://dx.doi.org/10.2308/iace-52769.s03>

TEACHING NOTES

Data Analytics in Tax Research: Analyzing Worker Agreements and Compensation Data to Distinguish Between Independent Contractors and Employees Using IRS Factors

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I. CONTENTS

The teaching notes contain:

1. Discussion of (1) the difference between an independent contractor and an employee and (2) the risks of misclassification.
2. Directions for selecting search terms, using the terms to search for relevant tax authority, and evaluating the applicability and significance of search results.
3. Exhibit 1: A completed analysis of IC agreements and compensation data.
4. A memorandum to file with the analysis results.
5. A set of ten multiple-choice questions for assessing student understanding of the querying, which can be used in lieu of marking student database files with queries.
6. Links to files containing:
 - a. A Word file with the IC agreements with NewPub.
 - b. A Word file of Exhibit 1 for the Case: Report Template: Analysis of Agreements and Compensation Data for Independent Contractors (ICs). This file has only the rows for the first two factors completed.
 - c. A Word file of Exhibit 1 for the Teaching Notes: Report Template: Analysis of Agreements and Compensation Data for Independent Contractors (ICs). This file has all rows for all factors completed.
 - d. The Access accdb data file with the compensation data: NewPubData.accdb.
 - e. A complete Access accdb file with all queries: NewPubAnalysis.accdb.
 - f. Two MP4 video files (25 minutes altogether) with voice narration of getting started in Access and querying for IRS Factor 2 in Microsoft Access®. The content of the MP4 files follows the script with screenshots version. The videos reveal the process of learning to query a relational database, not just the end product (Lento 2017).
 - g. A Word file with a script with screenshots illustrating the querying and query results in Microsoft Access® for the analysis for IRS Factor 2. The script assumes no prior knowledge of Microsoft Access®.
 - h. A Word file with ten multiple choice questions for assessing students' proficiency.

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Please do not make the Teaching Notes available to students or post them on websites.

Supplemental materials can be accessed by clicking the links in Appendix A.

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II. DISCUSSION OF THE DIFFERENCE BETWEEN AN INDEPENDENT CONTRACTOR AND AN EMPLOYEE AND THE RISKS OF MISCLASSIFICATION

Whether a worker is considered an independent contractor or an employee depends on the degree of control the employer has over the way the worker performs his or her services, according to Treas. Reg. § 31.3401(c)-1(b). Control is determined by considering a worker's payment terms, the employer's right to discharge the worker, the extent to which the worker is integrated into the company, and other aspects of the relationship. These considerations and others are identified in the 20 factors the IRS uses to evaluate worker classification in Rev. Rul. 87-41. The Tax Court has added factors that it will consider in evaluating employment relationships. In *Rosenfeld v. Commissioner*, T.C. Memo 2011-110, aff'd 112 AFTR 2d. 2013-5638 (9th Cir. 2013), the Tax Court determined that a worker's access to employee benefits is a factor that indicates the worker is an employee, not an independent contractor.

The tax consequences of these classifications are:

- An independent contractor is self-employed and responsible for all of his or her own tax withholding and payments, including income taxes and employment taxes. Employment taxes include Social Security taxes, Medicare taxes, and FUTA (Federal Unemployment Tax Act) taxes. Independent contractors receive Forms 1099-MISC from the companies they work for, which shows the amount paid to them during the year. The companies report this information to the IRS.
- Employees are not self-employed but instead are part of the regular workforce of a business. As a result, the employer is responsible for withholding and remitting income and employment taxes, is liable for one-half of Social Security and Medicare taxes, and is solely responsible for paying FUTA taxes. Employees receive Forms W-2 from their employers showing their wages and other compensation for the year and the amount of federal and state taxes withheld. W-2s also are sent to the IRS.
- Self-employed taxpayers operating as independent contractors can deduct their business expenses above-the-line on Schedule C under IRC Section 162. In contrast, the unreimbursed business expenses of employees are considered miscellaneous itemized deductions, no longer deductible under Section 67(g), as amended by the Tax Cuts and Jobs Act.

Employers that misclassify their employees face other consequences besides federal and state audits and penalties (Crabtree 2019). Misclassified employees can bring lawsuits against their employers to recover minimum wages, back pay, overtime pay, vacation pay, employee benefits, expense reimbursement, attorney's fees, and court costs (*O'Connor v. Uber* 2019).

The risks associated with misclassifying workers are significant, and the issue of classifying workers as employees versus independent contractors is getting more contentious as the gig economy,¹ propelled by the growth of technology companies, is prompting state legislation with the potential to upend the business models of companies such as Uber and Lyft that treat their drivers as independent contractors. For example, California has approved Assembly Bill 5 that attempts to classify drivers as employees, while courts in California have already ruled both ways. The legislation requires gig economy workers to be reclassified as employees instead of independent contractors. Uber and Lyft have warned their shareholders in SEC filings that their businesses would be adversely affected if drivers were classified as employees instead of independent contractors. Uber's description of the risk in an SEC Form S-1 Registration Statement was:

If, as a result of legislation or judicial decisions, we are required to classify Drivers as employees (or as workers or quasi-employees where those statuses exist), we would incur significant additional expenses for compensating Drivers, potentially including expenses associated with the application of wage and hour laws (including minimum wage, overtime, and meal and rest period requirements), employee benefits, social security contributions, taxes, and penalties. Further, any such reclassification would require us to fundamentally change our business model, and consequently have an adverse effect on our business and financial condition. (Source: SEC Form S-1, filed April 11, 2019, p. 28. Available at: <https://www.sec.gov/Archives/edgar/data/1543151/000119312519103850/d647752ds1.htm>)

III. GUIDING STUDENTS THROUGH TAX RESEARCH ON WORKER CLASSIFICATION

Instructors can choose how much tax research they want their students to do and how much guidance they want to provide to students. From least to most tax research, the instructors' choices are to have students apply only the 20 IRS factors, perform tax research through publicly available sources, or perform tax research through proprietary tax services.

¹ The gig economy—also called sharing economy or access economy—is activity wherein people earn income by providing on-demand work, services, or goods. Often, the provision of said work, services, or goods is through a digital platform like an app or website. Source: <https://www.irs.gov/businesses/gig-economy-tax-center>

Use Only the IRS's 20 Factors and the Definition of "Employee" (Rev. Rul. 87-41 and Treas. Reg. § 31.3401(c)-1)

The least approach to tax research on worker classification is to have students examine the IRS's definition of "employee" in Treas. Reg. § 31.3401(c)-1(a) and (b) and apply the IRS's 20 factors as documented in Rev. Rul. 87-41. The following sections explain searching publicly available sources and proprietary databases.

Search Terms

Research on worker classification can be performed via the internet across multiple sources, on the IRS website, or through a proprietary, commercial tax service, such as RIA Checkpoint or CCH Intelliconnect. The tax terminology for queries includes "worker classification," "independent contractor," and "employee." These words and phrases are the search terms that should be used to find relevant information. One important search strategy is to use quotes around search terms to indicate an exact phrase search in most search and retrieval systems; this type of search can yield more relevant results.

Search Publicly Available Sources: IRS Website and Internet (Generally)

The IRS website (<https://www.irs.gov/>) contains information on worker classification geared toward nonprofessionals and businesses. For example, a search on "worker classification" in the general search bar on the IRS homepage retrieves several relevant hits, including:

- Publication 1779, Independent Contractor or Employee Brochure. A brief brochure giving an overview of the worker classification rules.
- A link to the Payroll Professionals Tax Center, which then leads the researcher to a worker classification paragraph with a link to an IRS webpage with more detailed information: <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>
- A link to the Employer and Pay Related issues page, which includes a set of FAQs on Worker Classification: <https://www.irs.gov/government-entities/federal-state-local-governments/employer-and-pay-related-issues>

A search of the IRS website on the phrase "independent contractor" yields 160 relevant hits, with the most helpful result a link to the page for "Independent Contractor (Self-Employed) or Employee?": <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>. This page provides the most comprehensive explanation of the worker classification rules and offers links to relevant forms and publications.

Searching the IRS website itself retrieves links to many different IRS webpages without necessarily presenting the hits in the most relevant order. Performing a global Google search on "worker classification" or "independent contractor" provides better search results, which brings up the most relevant pages from the IRS website at a higher rank, including the page "Independent Contractor (Self-Employed) or Employee?"

The IRS website information is sufficient to gain an understanding of the significance of worker classification and of the basic rules. However, the IRS website information does not cite the Internal Revenue Code sections, regulations, and other administrative pronouncements that form the basis of the rules. Further, these searches do not give insight into how the courts have traditionally classified journalists and other workers in publishing companies. For this more in-depth inquiry, a search in a court case database or in a proprietary, professional tax service is necessary.

Search Proprietary Tax Services

Proprietary tax services such as RIA Checkpoint or CCH Intelliconnect allows students to perform professional research on worker classification, find relevant authority, and analyze the tax treatment of workers in the publishing industry through IRS rulings and court cases. The search instructions below apply to RIA Checkpoint.

First, identify the basic rules for worker classification with the following search parameters, using the "Terms & Connectors" method. Note that an "Intuitive Search" can be done with a string of search terms without using search logic or other special operators.

Search Terms: "worker classification," "independent contractor," "employee," "employment status," "common law employee"

Boolean/exact phrase/proximity searches:

1. "worker classification"
2. "independent contractor" /s employee
3. "employment status"
4. "common law employee"

Databases to search in RIA Checkpoint:

1. Internal Revenue Code
2. Treasury Regulations
3. IRS Rulings and Releases
4. Federal Tax Cases
5. Federal Tax Coordinator Analysis—Explanation of the law (secondary source)

Search One: Federal Tax Coordinator Analysis (FTC)

Terms & Connectors Query: “*Worker Classification*”

Check the database Federal Tax Coordinator Analysis.

Searching the Federal Tax Coordinator Analysis is an effective way to start the research because most global searches on worker classification are over inclusive because of the many documents related to employment tax issues and penalties. Finding the relevant explanation of the law in the Federal Tax Coordinator Analysis leads researchers to the most relevant primary sources.

Search One yields the relevant hits, FTC ¶H-4250, ¶H-4251, ¶H-4258, ¶H-4259, as displayed in “Table of Contents” order. FTC ¶H-4251, entitled “‘Employee’ Defined for Income Tax Withholding Purposes,” offers an explanation of the primary source law on worker classification. This section cites the two key primary items of authority for worker classification, Treas. Reg. § 31.3401(c)-1 and Rev. Rul. 87-41. FTC ¶H-4259 explains in detail the IRS’s 20-factor test and other tests for determining whether a worker is an employee or independent contractor for wage withholding purposes.

Read each of these documents to gain a basic understanding of the worker classification rules and the 20-factor test. Use the links to the primary source authority in the FTC explanation or perform a separate “Find by Citation” search from the left navigator as shown below to access the relevant Code and regulations sections. The FTC explanations also cite a number of relevant court cases relating to worker classification.

Search Two: Internal Revenue Code and Regulations, Rev. Rul. 87-41

Retrieve and review the Internal Revenue Code section and regulations for the basic rules on when a worker will be considered an “employee” versus an independent contractor. Retrieve and review Rev. Rul. 87-41, which sets forth the IRS’s 20-factor test for worker classification.

Find by Citation Searches

In the left navigator, click “Find by Citation” and then under the “Code & Regs” heading, enter “3401” in the box for the Current Code to retrieve the Code section that gives definitions pertaining to wage withholding.

In the left navigator, click “Find by Citation” and then under the “Code & Regs” heading, enter “31.3401(c)-1” in the box for Final, Temporary, and Proposed Regulations to retrieve the regulations’ definition of “employee” and the explanation of when the relationship of employer and employee exists.

In the left navigator, click “Find by Citation” and then click the “Rulings/IRB” heading. In the Revenue Rulings box, enter “87-41” to retrieve the full text of Rev. Rul. 87-41, which contains the IRS 20-factor test for determining worker classification.

Search Three: FTC, IRS Rulings, and Federal Tax Cases

Terms & Connectors Query: “*Independent Contractor*” (“*journalist*” or “*writer*” or “*magazine*” or “*newspaper*” or “*publishing*”)

Check the databases Federal Tax Coordinator Analysis, IRS Rulings and Releases, and Federal Tax Cases to find rulings and cases involving worker classification of writers, photographers, and publishing companies.

Results retrieved in the FTC include two pertinent sections that provide specific examples of when workers are treated as employees and when workers are treated as independent contractors, with citations to the underlying rulings and cases. All of the pertinent cases and rulings identified in the FTC should be read carefully to determine their relevance to the NewPub case.

¶H-4280, Specific examples of individuals treated as employees for wage withholding purposes:

1. Magazine editor: Rev. Rul. 72-176, 1972-1 CB 323.
2. TV writer for network: Rev. Rul. 56-130, 1956-1 CB 472.
3. Screenplay writer: *Springfield Productions Inc.*, (1979) T.C. Memo 1979-23.
4. Photographers: IRS Letter Ruling 9126006 and Rev. Rul. 56-694, 1956-2 CB 694.

5. Law clerks with document filing and acquisition duties: IRS Letter Ruling 9639001 and IRS Letter Ruling 9530004.

¶H-4281 Specific examples of individuals treated as independent contractors for wage withholding purposes.

1. Editor: IRS Letter Ruling 9131027.
2. Proofreader: IRS Letter Ruling 9131018.
3. Writers: Rev. Rul. 65-312, 1965-2 CB 394 and IRS Letter Ruling 9639060.

Use the links to the primary source documents in the FTC explanation or perform a separate “Find by Citation” search from the left navigator to retrieve and review the full text of each relevant ruling or court opinion on the worker classification of those engaged in publishing activities.

To find cases by citation or case names, in the left navigator, click on “Find by Citation” and then “Cases” or “Rulings/IRB” to bring up the search templates for these document types. Enter the case names, ruling numbers, or other relevant citations to retrieve specific documents.

Each item of primary source authority identified in the FTC should have a Citor search performed on it to ensure that it is still good law and has not been overturned, obsoleted, superseded, or cited unfavorably by subsequent authorities. Note that IRS Letter Rulings cannot be relied upon and are not precedential, but can give insight into how the IRS views the proper classification of specific professions.

Other cases and rulings retrieved in the above search should be scanned for relevance. The above search retrieves hits in about 140 different IRS pronouncements and in about 150 court cases, but a scan of these documents showing the keywords in context does not yield any relevant items not already identified in the FTC.

Irrelevant hits relating to the classification of salespersons working for publishing companies should be disregarded. The NewPub case does not concern workers in sales positions.

IV. REQUIREMENT 1

Exhibit 1 shows (1) a completed analysis of the agreements and the compensation data developed by applying the 20 IRS factors to NewPub and (2) calculation of an estimate of employment taxes and penalties due for payments for services made to independent contractors in 2015.

EXHIBIT 1

Analysis of Agreements and Compensation Data for Independent Contractors (ICs)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications (Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)																			
<p>1 Instructions to worker Risk: Use of instructions, such as invoicing manuals, provided by employer</p>	<p>Determine whether the employer provides training and exercises control over the way the IC does the job. (See Factors 1 and 2 in Rev. Rul. 87-41.)</p>	<p>1. Find agreement terms on training and invoicing.</p>	<p>Results: The agreements specify mandatory initial and periodic training for contributing editors, document acquisition specialists, special correspondents, and special blog contributors. The agreements also reference an invoice format guide. Implications: Review agreements and statements of work and modify them to limit mandatory training requirements and invoice specifications.</p>																			
<p>2 Training Risk: Training provided by employer</p>	<p>Determine whether the employer provides training. (See Factors 1 and 2 in Rev. Rul. 87-41.)</p>	<p>1. Find training expense payments, if any, for independent contractors (ICs). a. In query 02-1 training, join Worker and Job tables on WorkCode; join Worker and WorkerItemizedAmount tables on WorkerID; and join WorkerItemizedAmount and PayItem tables on PayItemID. By default, Access creates these joins. b. Add PayItemID (with Criteria 12 or 16 or 17 or 18), two instances of ItemizedAmount, Status (with Criteria "IC"), WorkerID (with Sort Ascending), and PayItemName to the Design View. The result shows 715 instances of reimbursed travel-related expenses for ICs. c. To group the expenses by PayItemID, open the Totals row and set the Total parameter for one instance of ItemizedAmount to Sum, and the other instance to Count. (To revert to the result showing the 715 instances, close the Totals row.) 2. To sum the travel expenses by WorkerID (55 workers), create a new query with query 02-1 training in Design View with the attributes WorkerID, SumOfItemizedAmount, and PayItemName, open the Totals row, and set the Total parameter for SumOf... to Sum. Save the query as 02-2 trainingByWorkerID. 3. To sum all travel-related expenses for ICs by PayItem, create a new query 02-3 trainingByPayItem with query 02-2 trainingByWorkerID in Design View with the attributes SumOfSum... and PayItemName, open the Totals row and set the Total for SumOfSum... to Sum. 4. To sum travel-related expenses overall, create a new query 02-4 trainingOverall with 02-3 training by PayItem in Design View with the attribute SumOfSumOf... Open the Totals row and set the Total to Sum, giving \$101,240.</p>	<p>Results: From query 2-1 training, there were 715 instances of reimbursed training expenses for training expense-related pay items (12, 16, 17, 18). From query 02-2 training by WorkerID, there were 220 instances grouped by pay item and WorkerID. From query 2-3 trainingByPayItem, training expenses by PayItem were:</p> <table border="1" data-bbox="911 184 1101 726"> <thead> <tr> <th>PayItemID</th> <th>PayItemName</th> <th>SumOfSumOfItemizedAmount</th> </tr> </thead> <tbody> <tr> <td>12</td> <td>training - basePay</td> <td></td> </tr> <tr> <td>16</td> <td>training - airfare</td> <td></td> </tr> <tr> <td>17</td> <td>training - meals</td> <td></td> </tr> <tr> <td>18</td> <td>training - lodging</td> <td></td> </tr> </tbody> </table> <p>From query 02-4 trainingOverall, the total training- travel-related expense was \$101,240.</p> <table border="1" data-bbox="1219 197 1333 688"> <thead> <tr> <th>02-4 trainingOverall</th> <th>SumOfSumOfItemizedAmount</th> </tr> </thead> <tbody> <tr> <td></td> <td>\$101,240.00</td> </tr> </tbody> </table>	PayItemID	PayItemName	SumOfSumOfItemizedAmount	12	training - basePay		16	training - airfare		17	training - meals		18	training - lodging		02-4 trainingOverall	SumOfSumOfItemizedAmount		\$101,240.00
PayItemID	PayItemName	SumOfSumOfItemizedAmount																				
12	training - basePay																					
16	training - airfare																					
17	training - meals																					
18	training - lodging																					
02-4 trainingOverall	SumOfSumOfItemizedAmount																					
	\$101,240.00																					

Implications: The company should renegotiate worker agreements to eliminate expense reimbursements for training travel-related expenses.

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EXHIBIT 1 (continued)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications (Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)
<p>3 Integration into business operations Risk: IC work integrated into business operations and subject to employer direction and control</p>	<p>Determine the extent of integration of IC services into business operations and the extent of control over IC.</p>	<p>1. Find language in contracts that implies the worker is subject to direction and control by business owner.</p>	<p>Results: All agreements provide some guidelines for how and when the contractors perform their tasks. Language in the agreements for document acquisition specialists, however, provides detailed requirements on how the documents should be collected and the exact times of day court visits are required. This language could imply a level of direction and control inconsistent with contractor status. Implications: Agreement terms should be modified to remove explicit instructions on how and when contractors acquire documents.</p>
<p>4 Services required to be rendered personally Risk: Personal performance required; employer interested in methods and results</p>	<p>Determine whether the company requires ICs to perform particular tasks themselves or if the IC is free to assign work to others.</p>	<p>1. Find agreement terms that require or imply that contractors must perform the work themselves or if subcontracting is restricted.</p>	<p>Results: Document acquisition specialists are specifically permitted to subcontract the work. There is no provision in the other agreements for subcontracting work, and the other contractors are required to be the sole creators of work content. Implications: Agreement terms should be modified to expressly permit subcontracting for ICs whose work does not involve copyrighted material or for work where the contractor's byline is not a required element.</p>
<p>5 Hiring, supervising, and paying assistants Risk: Assistants hired by and paid by the employer for the worker</p>	<p>Determine whether the employer hires and pays for assistants or controls the ICs' assistants.</p>	<p>1. Find any expense reimbursement related to hiring assistants for workers. 2. Find agreement terms that indicate the company will exercise supervision over ICs' assistants.</p>	<p>Results: Neither data nor agreements show that NewPub is hiring, supervising, or paying for assistants for ICs. Implications: The company does not appear to be at risk with regard to this factor.</p>

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EXHIBIT 1 (continued)

Results and Their Implications
(Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications
<p>6 Continuity of the relationship Risk: Continuing relationship with work performed at regular intervals</p>	<p>Determine whether the IC is a long-term worker and works regular hours over a long period.</p>	<p>1. Determine the regularity and the duration of employment. a. Determine duration of employment. In query 06-1 work duration, join Worker and Job tables on WorkCode. Add WorkerID, WorkCode, Status (with Criteria "IC"), HireDate, and EndDate to the Design View. Create an expression for the duration in months of IC employment: monthsAsIC: If([EndDate] Is Null,DateDiff("m",[HireDate],[#8/2/2016#]),DateDiff("m",[HireDate],[EndDate])) b. Summarize the work duration. In query 06-2 work duration avg min max, put the previous query in a new query with four instances of monthsAsIC in Design View. Open the Totals row, setting the instances to Avg, Min, Max, and Count. c. Determine payments by worker. In query 06-3 paymentsByWorker, join WorkerPayment to Worker on WorkerID and join Worker to Job on WorkCode. Add PaymentDate, PaymentAmount, WorkerID, and Status (with Criteria "IC") to Design View. Open the Totals row and change PaymentDate to Count and change PaymentAmount to Sum. d. Determine total payments. In query 06-04 total IC payments, use query 06-3 paymentsByWorker. Add CountOfPaymentDate and SumOfPaymentAmount to Design View. Open the Totals row and set both attributes to Sum.</p>	<p>Data Analysis Results: There were 2,905 payments made to 72 ICs over a 13 month period. The total amount paid was \$1,424,508.45. On average, ICs had worked 10,958 months with a minimum of 2 months and a maximum of 13 months. Agreement Results: The agreements generally have a two-year duration, but either party may cancel with notice. All the agreements require work to be done at specific intervals, with the Document Acquisition Specialists performing the most frequently. Implications: The two-year agreement duration and the regularity of the work performed is inconsistent with independent contractor status. The agreement terms should be shortened to a period of one year.</p>
<p>7 Set hours of work Risk: Employer-determined hours of work of the IC</p>	<p>Determine whether the company sets the days and hours of work. Note: Data for this factor may relate to Factor 12, payment frequency.</p>	<p>1. Review agreement terms for requirements for set hours to complete work.</p>	<p>Results: Although there are payments for hourly work for some ICs, no work schedules were revealed. The agreement terms indicate that the company sets daily required hours for Document Acquisition Specialists. The company designates events that photographers and videographers must cover. Implications: The company's requirement of set work hours for Document Acquisition Specialists is inconsistent with IC status. The agreement terms should be modified to eliminate set work hours for this category of IC.</p>
<p>8 Full-Time Required Risk: Fulltime work required</p>	<p>Determine how many hours the ICs work per week and whether they work full-time or overtime.</p>	<p>1. Review agreement terms for requirements that workers devote all available time to the company.</p>	<p>Results: The agreement terms do not indicate that the ICs must work full-time for the company. Implications: If ICs are billing for full-time work, that would indicate that the company controls most of their time and may be their only employer. The agreement terms should be modified to indicate that workers are paid by the job, not by the number of hours they work.</p>

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EXHIBIT 1 (continued)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications (Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)
<p>9 Working on employer's premises Risk: Performance of work on employer's premises</p> <p>9A Providing office space Risk: Office space provided or reimbursed</p>	<p>Determine whether ICs perform on-site services.</p> <p>Determine whether the employer provides an office for the IC or reimburses the IC for home office expenses. (See Factors 9, 13, and 14 in Rev. Rul. 87-41.)</p> <p>Determine whether the employer requires services to be performed in a set sequence.</p>	<p>1. Review agreement terms for requirements that workers perform services or maintain office on company premises.</p> <p>1. Find payments made to reimburse ICs for home office space expenses.</p> <p>2. Find agreement terms that allow ICs to have an office on company premises or allows ICs to seek reimbursement for a home office.</p>	<p>Results: The agreement terms do not require that work be done on the company's premises. Implications: The company's practices appear to be consistent with IC status.</p> <p>Results: No data or agreement terms show that the company is reimbursing ICs for home office space expenses but see row 14 for documentation of payments for office equipment (laptops, scanners, and tablets). Implications: The company's practices appear to be consistent with IC status.</p>
<p>10 Setting order or sequence of work Risk: Services performed in a certain pattern or sequence</p>	<p>Determine whether the employer requires services to be performed in a set sequence.</p>	<p>1. Find agreement terms requiring services to be performed in a certain pattern or sequence.</p>	<p>Results: Except for the Special Correspondents and Special Blog Contributors, the company exercises some control over the pattern of work. The Document Acquisition Specialists have the most requirements regarding the sequence of their work. Implications: Agreement terms should be modified to focus on delivery of work results rather than the sequence and timing of work tasks.</p>
<p>11 Required oral or written reports Risk: Submission of regular reports by IC</p>	<p>Determine whether there are reporting requirements in contracts.</p>	<p>1. Find agreement terms for invoicing and regular work reports to be submitted beyond the contracted-for deliverables.</p>	<p>Results: The agreement terms for all ICs require invoices to be submitted according to NewPub's standard invoice guide. No other work reports or progress reports appear to be required in the agreement terms. Implications: Agreement terms should be modified to eliminate detailed requirements for invoice formats.</p>
<p>12 Payment by hour, week, month Risk: Payments made on an hourly, weekly, or monthly basis; base pay guaranteed</p>	<p>Determine whether the employer pays ICs at regular intervals instead of based on the job completed and whether base pay is guaranteed. (See Factors 7, 10, and 12 in Rev. Rul. 87-41.)</p>	<p>1. Find payments made on an hourly, weekly, or monthly basis. Identify guaranteed minimums.</p> <p>a. Make a copy of query 02-1 training and rename the copy to 12- 1 TimePayments. (To make a copy of a query, highlight the name of the query in the lefthand column of Queries, right click, select Copy and Paste, and change the name of the query.) Change the Criteria for PayItemID to 4 or 11.</p> <p>b. To summarize the base pay payments (PayItemID = 4 or 11), create the query 12-2 TimePaymentsSum by putting query 12-1 TimePayments in Design View with the attributes PayItemID and SumOfSum... and opening the Totals row and setting SumOfItem... to Sum.</p> <p>The result shows \$116,400 for hourlyBasePay paid to Document Acquisition Specialists (PayItem = 4 hourlyBasePay even if no documents) and \$91,600 paid to Special and Blog Contributors (PayItemID = 11 BasePay for availability of \$200 per week).</p>	<p>Results: Document Acquisition Specialists are paid for two hours each day whether or not they obtain documents. They were paid \$116,400. Special Correspondents and Blog Contributors are paid weekly for availability, with guaranteed payments of \$200 per week even if no work is needed, with total payments of \$91,600. Implications: Agreements should be modified to eliminate guaranteed base pay and hourly pay and move ICs to a system of paying on a lump-sum basis or upon completion of tasks.</p>

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EXHIBIT 1 (continued)

Results and Their Implications

(Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications
<p>13A Payment of business or travel expenses Risk: Business or travel expenses reimbursed</p>	<p>See rows 13A and 13B.</p>	<p>See rows 13A and 13B.</p>	<p>See rows 13A and 13B.</p>
<p>13A Payment of travel expenses Risk: Travel expenses reimbursed (mileage and parking)</p>	<p>Determine whether the employer reimburses the ICs for travel expenses when news gathering or when ICs attend training sessions. (See Factor 13 in Rev. Rul. 87-41.)</p>	<p>1. Find payments made to reimburse ICs for travel expenses, including transportation, lodging, and meals. a. Make a copy of query 02-1 training and rename the copy to 13A-1 TransExpenses. Change the Criteria for PayItemID to 14 or 15. b. To sum the transportation expenses by worker, create query 13A-2 TransExpensesByWorker by putting query 13A-1 TransExpenses in Design View with the attributes WorkerID and SumOfSum... and opening the Totals row. c. To sum transportation expenses by PayItem (mileage and parking), create query 13A-3 TransExpensesByPayItem by putting query 13A-2 TransExpensesByWorker in Design View with the attributes SumOf... PayItemID, and PayItemName, opening the Totals row, and setting Total to Sum. d. To sum transportation expenses overall, create query 13A-4 TransExpenseOverall by putting query 13A-3 TransExpensesByWorker in Design View with the attribute SumOf... opening the Totals row, and setting Total to Sum.</p>	<p>Results: While news gathering, 27 ICs were reimbursed \$9,208.10 for mileage and \$19,435 for parking, \$28,643.10 overall. Reimbursed training-related travel expenses were identified in row 2 above. Implications: Agreement terms should be modified to eliminate direct reimbursements for mileage and parking expenses in the conduct of news gathering.</p>
<p>13B Payment of business expenses Risk: Office expenses reimbursed, including copy charges for documents</p>	<p>Determine whether the employer reimburses the ICs for office expenses, such as paper, toner, copy charges, paper clips, etc. (See Factors 13 and 14 in Rev. Rul. 87-41.)</p>	<p>1. Find payments made to reimburse ICs for office expenses, including copy charges. a. To find reimbursements for pages scanned, create the query 13B-1 pagesScanned with PayItem joined to WorkerItemizedAmount on PayItemID, WorkerItemizedAmount joined to Worker on WorkerID, and Worker joined to Job on WorkCode. Put WorkerID, Status (with Criteria "IC"), WorkCode (Descending), PayItemID (with Criteria 3), PayItemName, UnitPay, Quantity, and ItemizedAmount in Design View. Pages scanned were reimbursed for two WorkCodes: 25 Document Acquisition Specialists and 40 Special Correspondents. b. Summarize pages scanned in query 13B-2 total pagesScanned using the query 13B-1 pagesScanned with the attributes WorkCode and ItemizedAmount in Design View. Open the Totals row and set ItemizedAmount to Sum.</p>	<p>Results: There was no evidence (data) for reimbursement of office expenses but there were reimbursements for copy/scanning charges to Document Acquisition Specialists of \$237,938 and to Special Correspondents for \$6,497. Implications: Agreement terms should be modified to pay by document produced instead of adding reimbursements for scanning and copy charges.</p>

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EXHIBIT 1 (continued)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications (Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)
14 Furnishing tools, equipment, and materials Risk: Equipment provided by employer	Determine whether the employer provides equipment to the ICs or reimburses them for purchased equipment. (See Factor 14 in Rev. Rul. 87-41.)	1. Find reimbursements and/or invoices for office equipment provided to ICs. a. Make a copy of query 02-1 training and rename the copy to 14-1 OfficeEquipExpense. Change the Criteria for PayItemID to 13 or 19 or 20. b. To sum the office equipment expenses by worker, create query 14-2 OfficeEquipExpensesByWorker by putting query 14-1 OfficeEquipExpense in Design View with the attributes WorkerID, PayItemID, PayItemName, and SumOfSum... opening the Totals row and setting Total for SumOfSum... to Sum. c. To sum office equipment expense by PayItem (laptops, scanners, and tablets), create query 14-3 OfficeEquipExpenseByPayItem by putting query 14-1 OfficeEquipExpense in Design View with the attributes SumOf... PayItemID, and PayItemName, opening the Totals row, and setting Total to Sum. d. To sum transportation expenses overall, create query 13A-4 TransExpensesOverall by putting query 13A-3 TransExpensesByWorker in Design View with the attribute SumOf... opening the Totals row, and setting Total to Sum.	Results: There were 77 instances of payments for office equipment (\$12,329 for laptops, \$9,714 for scanners, and \$4,513 for tablets) for \$26,556 overall. Implications: ICs should provide their own equipment and agreements should reflect this requirement.
15 Reimbursement of IC office expenses Risk: ICs reimbursed for facilities they provided	Determine whether ICs invest in their own work facilities. Data on reimbursed home office expenses may be helpful.	1. Identify employer expenses related to IC offices. 2. Find agreement terms that indicate payment for home offices or that workers are entitled to company office space.	Results: Except as documented for Factor 14, there is no evidence (data) indicating that ICs are reimbursed for office facilities or provided a company office. Implications: The company's practices are consistent with IC status.
16 Realization of profit or loss by worker Risk: IC insulated from profit or loss	Determine whether ICs are guaranteed a profit and are insulated from losses.	1. Find agreement terms on guaranteed payments or guaranteed profits.	Results: Special Correspondents and Special Blog Contributors are guaranteed a base pay whether or not they submit articles. See Item 12 above for ICs receiving guaranteed payments. Implications: The practice of paying a guaranteed base pay is inconsistent with independent contractor status and should be eliminated from the agreement terms.
17 Working for more than one business at a time Risk: IC prohibited from working for others	Determine whether ICs work for others or if company restricts contractors' ability to work for others.	1. Find agreement terms on restrictions on performing services for other companies.	Results: The agreement terms allow ICs to perform work for others. Implications: The company's practices appear to be consistent with IC status.
18 Making services available to the general public Risk: IC prohibited from making services available to the general public	Determine whether the worker regularly makes services available to the public.	1. Find agreement terms for the contractor's reservation of right to offer services to others. (Related to Factor 17.)	Results: All agreements specifically state that the contractor is free to perform services for others. Implications: The company's practices appear to be consistent with IC status.

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EXHIBIT 1 (continued)

Results and Their Implications

(Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications
<p>19 Firm's right to discharge Risk: Employer can dismiss IC for causes other than failure to produce results</p>	<p>Determine whether the company can discharge the worker at will.</p>	<p>1. Find contract language on termination rights of the company.</p>	<p>Results: In most agreements, the terms allow the company or worker to terminate the agreement with 30 days' notice. Special Blog Contributors must give a 90-day notice. Implications: Although the right to terminate is mutual, the ability to terminate on short notice may be inconsistent with IC status. The company should consider changing the termination terms in the agreements to require longer notice periods.</p>
<p>20 Worker's right to terminate Risk: IC with no right to end relationship at any time without liability</p>	<p>Determine whether the worker can terminate the contract at will.</p>	<p>1. Find agreement terms for termination rights and consequences of early termination by IC.</p>	<p>Results: In most agreements, the company or worker may terminate an agreement with 30 days' notice. Special Blog Contributors must give a 90-day notice. Implications: Although the right to terminate is mutual, the ability to terminate on short notice may be inconsistent with IC status. The company should consider changing termination terms in the agreements to require longer notice periods.</p>
<p>Other (Tax Court additional factor) Risk: Employee benefits provided to ICs</p>	<p>Determine whether the employer provides any type of employee benefits to ICs, including vacation pay, holiday bonuses, health insurance, retirement plans, etc. (See discussion of Rev. Rul. 75-41 in Rev. Rul. 87-41.)</p>	<p>1. Find payments for employee benefits provided to ICs, including holiday bonuses, health insurance, retirement plans, vacation pay, etc.</p>	<p>Results: There is no evidence (data) indicating that ICs are provided with employee benefits. Implications: The company's practices appear to be consistent with IC status.</p>

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EXHIBIT 1 (continued)

Results and Their Implications

(Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications
Potential employment taxes and penalties due for misclassification	Based on the provided assumptions, calculate the potential amounts due for each IC job role (all workers in the role) and across all roles if the IRS were to classify the ICs as employees.	<ol style="list-style-type: none"> 1. Create the query est1payDetail2015. <ol style="list-style-type: none"> a. Put these tables in Design View: Job, Worker, WorkerPayment, WorkerItemizedAmount, and PayItem. The joins Access supplies are needed. Keep them. Add a join from WorkerPayment to WorkerItemizedAmount on WorkerInvoiceID. Adjust table positions to show all joins. b. Put these attributes in Design View: Status, WorkCode, Role, WorkerID, PayItemID, ItemizedAmount, PaymentDate. c. Add these criteria: "IC" on Status; < 13 on PayItemID; > 0 on ItemizedAmount. Save the query. d. Open the Totals row. Change ItemizedAmount from Group By to Sum. Set WorkCode, WorkerID, PayItemID, and PaymentDate to Sort Ascending. e. Create an expression for the year of payment: payYear: IIf([PaymentDate] Like "*"*/2015,"2015","2016") Change Group By to Expression. Add a criterion of "2015" to payYear (include quotation marks). f. Save the query. 2. Create the query est2payByWorker2015. <ol style="list-style-type: none"> a. Put query est1payDetail2015 in Design View and populate the query with WorkCode, Role, WorkerID, and SumOffItemizedAmount. b. Open the Totals row. Change Group By to Sum for the SumOffItemizedAmount. Inspect the results to verify that there are 67 rows, one row for each worker. 	<ol style="list-style-type: none"> 1. The query est1payDetail2015 shows 2,731 rows, one row for each payment to a worker. 2. The query est2payByWorker2015 calculates the sum of payments to workers for services in 2015.

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Results and Their Implications

(Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications
	3. Create the query est3dueByWorker2015 to calculate taxes and penalties for payments made to ICs for services in 2015:	<p>a. Put query est2payByWorker in Design View with these attributes: WorkCode, Role, WorkerID, and SumOfItemizedAmount. Save the query.</p> <p>b. Create the following expressions.</p> <ol style="list-style-type: none"> 1. wageWhhdg: 0.015*[SumOfSumOfItemizedAmount] 2. empleeOASDI: 0.2*0.062*[SumOfSumOfItemizedAmount] 3. empleeHI: 0.2*0.0145*[SumOfSumOfItemizedAmount] 4. emplrOASDI: 0.062*[SumOfSumOfItemizedAmount] 5. emplrHI: 0.0145*[SumOfSumOfItemizedAmount] 6. FUTA: 0.006*[SumOfSumOfItemizedAmount] <p>c. Save the query, which makes the attributes available in the Expression Categories column in the Expression Builder.</p> <p>d. Create the following expression to sum the tax liabilities: taxLiab: [wageWhhdg] + [empleeOASDI] + [empleeHI] + [emplrOASDI] + [emplrHI] + FUTA</p> <p>e. Save the query. Verify enough calculations to convince yourself that the expressions give the intended results, including the sum in taxLiab.</p> <p>f. Create an expression to calculate late payment fees: latePymt: [taxLiab]*0.005*DateDiff("m,""10/21/2015,""9/15/2016")</p>	3. Query est3dueByWorker2015 calculates the employment taxes and penalties due for each worker in 2015.
		<p>Of the 1,171 payments made in 2015, 576 were made on or before 10/20/2015, and 595 were made on or after 10/22/2015. While not exact, this makes the date midpoint for payments for calculating the monthly late fee to be 10/21/2015, when no payments were made. Thus, the second argument in the DateDiff function that calculates the number of months to 9/15/2016 becomes 10/21/2015. Using the exact number of months would require computing taxLiab for each payment.</p> <p>g. Save the query.</p> <p>h. Create an expression to sum the tax liability and late payment fee: due2015ByWorker: [taxLiab] + [latePymt]</p> <p>i. Save the query.</p>	

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EXHIBIT 1 (continued)

Results and Their Implications

(Show specific numerical results, in tables if there are more than a few numbers and a summary number would be inadequate.)

IRS Risk Factor	Analysis Objective	Analysis Strategy: Agreements and Compensation Data	Results and Their Implications

Exhibit 1 is available for download, in its original, user-friendly format. See the link in Appendix A.

**V. REQUIREMENT 2:
MEMORANDUM TO FILE DOCUMENTING ANALYSIS (DATA AND AGREEMENTS) RESULTS**

Murray, Rupani, Mheasan and Giles, CPAs

Date: July 23, 2018

Reviewer: Jordan

Profile of Company and Relevant Facts

NewPub is a start-up media company that employs in-house editors and writers but relies on independent contractors (ICs) scattered across the country to acquire much of its content. An initial review of agreements with its independent contractors and discussions with management revealed that NewPub may be engaging in some practices that could expose the company to worker reclassification by the IRS. Some of these practices are evident in the agreements with its content providers, but the managers advise that the actual treatment of contractors varies over time and is sometimes contractor-by-contractor, and does not always reflect the exact terms of the original agreement. Murray, Rupani, Mheasan and Giles (MRMG) has reviewed the independent contractors' work agreements and has analyzed its business operations. The results of that analysis are summarized below.

None of NewPub's workers currently classified as independent contractors are statutory non-employees under § 3508.

Issue

Are NewPub's independent contractors properly classified based on the factors for determining employee status?

Conclusion

No. Some practices of NewPub with regard to its treatment of independent contractors are inconsistent with its characterization of them as independent contractors and could lead to a challenge by the IRS for several job categories.

Analysis and Support Pertaining to the IRS's 20 Factors

The analysis of NewPub's data from its business operations and a review of the agreements with its content providers reveal that NewPub's actions are inconsistent with the classification of some of its workers as independent contractors. Treas. Reg. § 31.3401(c)-1(b) provides an explanation of when the relationship of employer and employee exists based on an employer's right to control and direct how work is performed. In Rev. Rul. 87-41, 1987-1 C.B. 296, the IRS sets forth 20 factors it considers to determine when an employer-employee relationship exists. NewPub's practices are unfavorable for a number of these factors as explained below.

For Factors 1 and 2, *Instructions and Training*, NewPub provides its contractors detailed instructions on how to do their work and on invoicing and also provides annual training sessions. The compensation data show that NewPub pays hourly compensation for training hours and reimburses the contractors for travel expenses incurred for the training sessions. Requiring a particular method or manner of performing the job is a factor favoring characterization as an employee rather than an independent contractor.

For Factor 7, *Set Hours of Work*, the agreements with the data acquisition contractors set specific hours for the contractors to perform their work each day. This is a practice indicating control by the employer in an employer-employee relationship.

For Factor 12, *Payment by Hour, Week, or Month*, paying contractors by the hour tends to indicate an employer-employee relationship. NewPub pays Special Correspondents "two hundred dollars (\$200.00) each week as base pay and an additional \$200 per week for each news story." NewPub pays "[f]ive dollars (\$5.00) for each acceptable document submitted by Contractor plus a minimum payment of \$15.00 per hour for two hours each week day." The guaranteed payments to Special Correspondents and Data Acquisition contractors are consistent with employee relationships. While the agreements make clear that Monthly News Column contractors are paid \$1,500 for each column and that one column is expected each month, the language "Company shall pay Contractor fifteen hundred dollars (\$1500.00) each month for the content" could imply that monthly payments are guaranteed. Similarly, Special Blog Contributors receive \$200 for each blog, and NewPub expects one blog post each week. This confusion in the language of the Agreements should be addressed to make it clear that payments are tied to work product, not time schedules. NewPub pays photographers and videographers a set amount per photo or video shoot in addition to a specified amount for each photograph or video used in NewPub's publications. While this is not guaranteed pay, it could expose those IC positions to scrutiny by the IRS.

For Factor 13, *Payment of Business and/or Traveling Expenses*, NewPub reimburses all of its ICs for travel to training sessions and also reimburses all of its ICs except Special Blog Contributors for transportation and travel associated with their

work. In addition, Data Acquisition contractors are reimbursed per page for copy/scanning charges, which may constitute an office expense reimbursement under the IRS rules.

NewPub is reimbursing several categories of its ICs for laptops, scanners, and/or tablets, including Contributing Editors, Special Correspondents, and Data Acquisition contractors. This practice runs afoul of Factor 14, *Furnishing of Tools or Materials*. These are significant “tool” expense reimbursements and tend to indicate an employer-employee relationship.

Analysis of Court Cases and Revenue Rulings

The Tax Court has added factors that it will consider in evaluating employment relationships. In *Rosenfeld v. Commissioner*, T.C. Memo 2011-110, aff'd 112 AFTR 2d. 2013-5638 (9th Cir. 2013), the Tax Court reviewed additional factors and determined that a worker's access to employee benefits is a factor indicating the worker is an employee, not an independent contractor. The compensation data do not show any ICs participating in NewPub's employee benefit plans.

A number of court cases and revenue rulings have examined job categories similar to those of NewPub's contractors and have found that workers such as writers, editors, and photographers were employees rather than independent contractors. In *Springfield Productions Inc. v. Commr.*, T.C. Memo 1979-23, a writer who wrote screenplays under contract over a 14-year period was found to be an employee. The employer paid the writer's expenses and allowed him to participate in the employer's pension and profit-sharing plan. NewPub pays some expenses of its ICs but there is no evidence of NewPub's ICs participating in its employee benefit plans. In Rev. Rul. 56-130, 1956-1 C.B. 472, a TV writer for a network was determined to be an employee. The writer was subject to set deadlines for his work and was paid a stated sum each week. For NewPub, both Special Correspondents and Data Acquisition specialists are paid a regular amount each week regardless of whether they produce content.

The classification of newspaper writers has been addressed by the IRS in several revenue rulings, which have had mixed results on the independent contractor issue. In Rev. Rul. 70-439, 1970-2 C.B. 208, an individual who operated a newspaper plant owned by a newspaper company and the individuals working for him were held to be employees of the company. The newspaper company had the right to control operations and to direct editorial policy. On the other hand, a writer who furnished his local paper with a weekly column on a subject for which he was considered an authority was found to be an independent contractor in Rev. Rul. 65-312, 1965-2 C.B. 394. He did not have to keep regular hours or prepare a certain amount of material. Also, the newspaper did not furnish him any equipment or supplies. Rev. Rul. 68-644, 1968-2 C.B. 468, addressed the issue of whether country correspondents who furnished weekly news items to a newspaper were employees. The IRS concluded that they were independent contractors because they were paid only for acceptable items and the employer had no control over their time or whether they submitted an article. The newspaper correspondents at issue in Rev. Rul. 60-148, 1960-1 C.B. 391, however, were found to be employees even though they were not required to furnish a minimum of material to a newspaper or to devote a specified amount of time to the newspaper's business. They were compensated at a fixed monthly rate and were expected to meet daily deadlines.

In Rev. Rul. 72-176, 1972-1 C.B. 323, a magazine editor for a social club with a fixed monthly remuneration was found to be an employee. The IRS noted that he was paid a specific sum at regular intervals rather than incurring the risk of gain or loss from his activities. For NewPub, both Special Correspondents and Data Acquisition contractors have fixed weekly payments.

In Rev. Rul. 56-694, 1956-2 C.B. 694, a corporation that hired photographers to take pictures in clients' homes with set poses and set times and furnished the photographers' equipment was determined to have established employer-employee relationships with its photographers. NewPub does not furnish equipment to its photographers; however, the photographers have submission deadlines and are paid for their time in covering events even if their photographs are not used by NewPub, which could cause the IRS to question their status.

To determine independent contractor versus employee status, businesses must weigh many factors, none of which are necessarily determinative. Examining the entire relationship NewPub has with its ICs, the worker categories of Contributing Editors, Special Correspondents, and Data Acquisition contractors are most at risk for reclassification. The negative factors for NewPub's other ICs are limited, although some of NewPub's practices for Blog Contributors, Photographers, and Videographers should be reconsidered to avoid any possibility of an employer-employee relationship.

Estimated Taxes and Penalties for 2015 if the IRS Classified ICs as Employees

Under Sec. 3509, if the IRS reclassifies NewPub's independent contractors as employees, NewPub could be retroactively liable for income tax withholding, employment taxes, and late fees on the employees' wages. For example, calculation of estimated taxes and penalties for 2015 as of 9/15/2016 if the IRS were to classify all of NewPub's ICs as employees gave the following results. For payments for services to ICs of \$511,900 in 2015, employment taxes were \$56,763.55 (11.09 percent of payments) and penalties were \$3,122.00 (5.21 percent of payments). Together, employment taxes and penalties were \$59,885.55 (11.70 percent of payments).

Actions to be Taken

Based on the completed report, prepare a client letter to NewPub management reviewing the results and recommending consultation with attorneys to revise IC agreement terms and adoption of new business practices to preserve its workers' independent contractor status.

Advise client to consider the IRS's Voluntary Classification Settlement Program to reclassify workers going forward to obtain partial tax relief and avoid audit penalties.

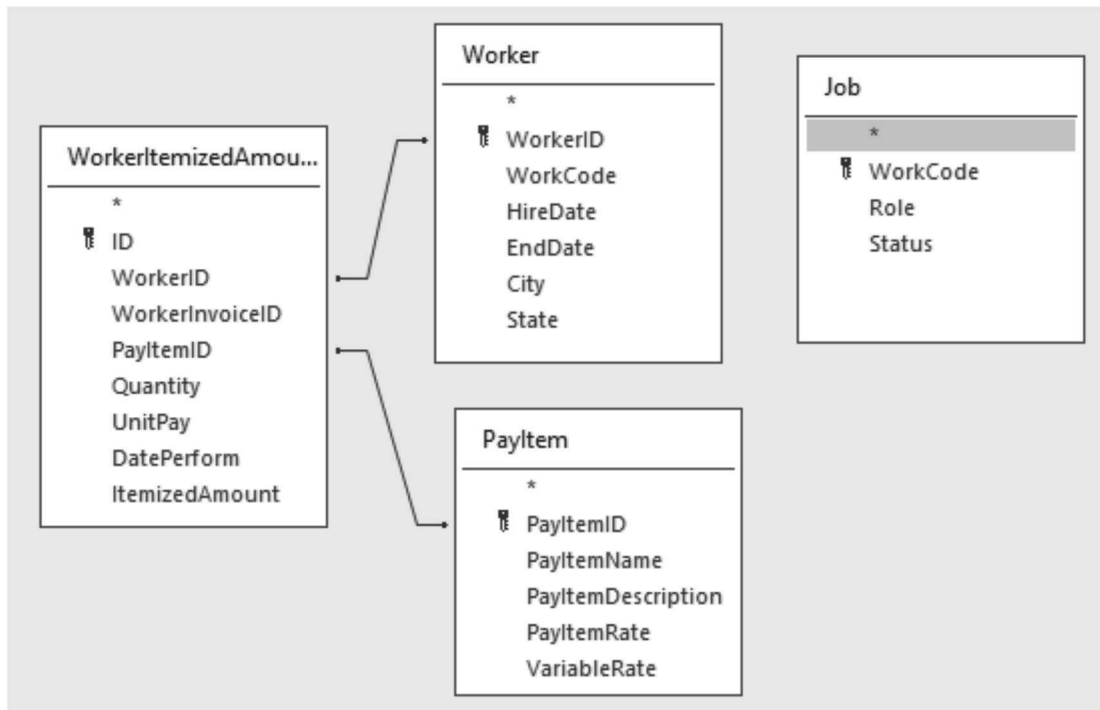
VI. MULTIPLE-CHOICE QUESTIONS FOR ASSESSING NEWPUB QUERYING

The following questions for assessing the querying in the NewPub case appear in the Respondus® format for importing into learning management systems. An asterisk (*) marks the best response. Feedback explanations are tagged with "@."²

1. A query to find training expenses payments for ICs may have multiple instances of an attribute because:
 - @ More than one summarization may be informative, e.g., sums of dollar amounts and counts of transactions.
 - a. Users are accustomed to viewing results with multiple instances
 - b. The query will not execute with only a single instance of the attribute
 - *c. Different summarizations of the underlying data may be informative
 - d. Every query run on monetary data attributes must sum the amounts
2. Suppose a query has:
 - 1 The attributes WorkerID, SumOfItemizedAmount, and PayItemName in Design View
 - 2 An open Totals row with the Total parameter for SumOfItemizedAmount set to Sum
 To edit the query to show the sums of ItemizedAmounts by WorkerID:
 - @ Deleting the attribute PayItemName allows Group By to summarize SumOfItemizedAmount by WorkerID, which is the intended result.
 - a. Add a new attribute for that purpose
 - *b. Delete the attribute PayItemName
 - c. Close the Totals row and add an attribute
 - d. Editing the query is insufficient for this objective
3. Suppose there are workers that have received payments for which there is no Status value in the data. The easiest way to find just these workers is to:
 - @ The easiest way to find these workers is to run a query where Status has a value of Is Null. The "Is Null" criterion must be used because the Status values are null for these workers. A criterion of < > "IC" will give workers with Status "E."
 - *a. Run a query where Status has a criterion of Is Null.
 - b. Run a query where Status has a criterion of "".
 - c. Run a query where Status has a criterion of < > "E."
 - d. These workers cannot be found by setting the Status criterion.
4. To obtain access to data pertaining only to workers designated as independent contractors (ICs) for analysis requires joining the tables:
 - @ Analyzing data pertaining to ICs requires having joined Job and Worker on WorkerID to identify workers with Status = "IC." Although joining the Job and WorkerPayment tables allows selecting only ICs, that approach bypasses the analysis of the detailed records in other tables that are needed to determine whether the entirety of the payments complies with IRS factors.
 - a. Job and WorkerPayment
 - *b. Job and Worker
 - c. PayItem and WorkerInvoice
 - d. PayItem and WorkerPayment
5. A query for getting access to all the data needed to find and summarize training expenses (if any) for which ICs were reimbursed requires joining the following tables:
 - @ The required data include Status from the Job table, PayItemName (or PayItemID) from PayItem, and dollar amounts from WorkerItemizedAmount.
 - a. Job, PayItem, WorkerItemizedAmount

² A Word file of the multiple choice questions is available for download, see the link in Appendix A.

- b. PayItem, Worker, WorkerItemizedAmount
 - *c. Job, PayItem, Worker, WorkerItemizedAmount
 - d. PayItem, Worker, WorkerInvoice, WorkerItemizedAmount
6. Putting two instances of ItemizedAmount in a query:
- @ Using two instances in the same query is a good idea because it allows showing the sum of the dollar amounts and a count of the items making up the sum in a single query, reducing the number of queries.
 - a. Is a bad idea because it impedes finding the summarization of the dollar amounts
 - b. Is a bad idea because it unnecessarily complicates an otherwise simple query
 - c. Is a good idea because it has the potential to lead to more uniform query structure
 - *d. Is a good idea because it allows summing the amounts and counting the items
7. Suppose there is a query OfficeEquipExpense with the attributes PayItemID, PayItemName, ItemizedAmount (two instances), Status, and WorkerID. PayItemID has been restricted to show only office equipment expenses for laptops, tablets, and scanners. Status has been restricted to show only ICs. The best approach to finding the sum of the expenses for each worker is to:
- @ The best approach is to open the Totals row, set Sum on one ItemizedAmount, and set Count on the other ItemizedAmount. Given the query OfficeEquipExpense, this is the most direct approach.
 - *a. Open the Totals row and set Sum and Count on ItemizedAmount
 - b. Open the Totals row and set Sum on PayItemID and Ascending on WorkerID
 - c. Create an expression that sums one of the ItemizedAmount attributes
 - d. Create an expression that groups one of the ItemizedAmount attributes
8. Suppose the tables joined as shown in the following figure were in a query for finding reimbursed travel expenses (mileage and parking):



This use of the tables:

- @ The join on WorkCode from the Worker table to the Job table is omitted. Without it, there is no distinction between employees and ICs, and the results give many more rows than the result needs.
 - a. Includes all joins required for obtaining correct results
 - b. Makes good use of default joins in the query manager
 - c. Has one unneeded join and omits an essential join
 - *d. Omits a join that is needed to give the desired results

9. The query in the following figure for showing payments to ICs on a time worked basis does not show the tables Worker, Job, or WorkerItemizedAmount because:

12-1 TimePayments

*

PayItemID
SumOfItemizedAmount
Status
WorkerID
CountOfItemizedAmount

Field:	PayItemID	SumOfItemizedAmount
Table:	12-1 TimePayments	12-1 TimePayments
Total:	Group By	Sum
Sort:		
Show:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Criteria:		

- @ The tables are not shown explicitly in the query design because the query summarizes (Group By PayItemID and Sum the amounts) results from the early query, 12-1 TimePayments.
- a. Those tables were not needed to find time-based payments
 - *b. The query summarizes results from another query
 - c. There were no time-based payments to ICs in the data
 - d. The query was incorrectly formulated for that purpose
10. Some queries can be replicated, potentially reducing the overall query effort. Suppose the following query, which finds training expenses, is replicated and renamed.

Field:	PayItemID	ItemizedAmount	Status	WorkerID	ItemizedAmount	PayItemName
Table:	WorkerItemizedAmou	WorkerItemizedAmou	Job	Worker	WorkerItemizedAmou	PayItem
Total:	Group By	Sum	Group By	Group By	Count	Group By
Sort:				Ascending		
Show:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Criteria:	12 Or 16 Or 17 Or 18		"IC"			
or:						

To find office equipment expense, the query needs to be edited to change:

- @ To find office equipment expenses instead of training expenses, change Criteria values to correspond to PayItem values for office equipment expense.
- *a. Criteria values
 - b. Criteria and Status values
 - c. Group By settings
 - d. Group By settings and Sort order

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APPENDIX A

Student_Case: <http://dx.doi.org/10.2308/iace-52769tn.s01>
iace-52769tn_IC Agreements With NewPub: <http://dx.doi.org/10.2308/iace-52769tn.s02>
iace-52769tn_Exhibit 1_template: <http://dx.doi.org/10.2308/iace-52769tn.s03>
iace-52769tn_Exhibit 1_completed: <http://dx.doi.org/10.2308/iace-52769tn.s04>
iace-52769tn_NewPub Data: <http://dx.doi.org/10.2308/iace-52769tn.s05>
iace-52769tn_NewPub Analysis: <http://dx.doi.org/10.2308/iace-52769tn.s06>
iace-52769tn_NewPub Pt1: <http://dx.doi.org/10.2308/iace-52769tn.s07>
iace-52769tn_NewPub Pt2: <http://dx.doi.org/10.2308/iace-52769tn.s08>
iace-52769tn_Querying for Factor 2 Training Reimbursements: <http://dx.doi.org/10.2308/iace-52769tn.s09>
iace-52769tn_Multiple Choice Questions: <http://dx.doi.org/10.2308/iace-52769tn.s10>