

Who Is Minding the Nanny Tax?

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1. Introduction

Households are generally responsible for filing and remitting various Federal and State employment taxes, commonly subsumed under the moniker “the Nanny Tax,” when they employ domestic help, such as a nanny, senior caregiver, housekeeper, health aide, cook, or gardener. The largest of these taxes are the Federal Social Security and Medicare taxes administered under the Federal Insurance Contributions Act (FICA), which are applied at a combined rate of 15.3 percent to the wages of any household employee who is paid more than \$2,100 over the course of a year. Household employers are also responsible for Federal unemployment taxes administered under the Federal Unemployment Tax Act (FUTA) when they pay their employees more than \$1,000 in any quarter of the current or preceding calendar years. FUTA tax is normally applied at a rate of 0.6 percent of wages.² Besides these Federal taxes, a household employer is generally required to remit certain State payroll taxes. In addition to State unemployment insurance contributions, these payroll taxes may include disability and/or workers’ compensation insurance, depending on the State where the work is performed.

Failure to pay the Nanny Tax has resulted in numerous high-profile scandals involving political appointees of every U.S. president from Clinton to Trump. This ongoing parade of “Nannygate” cases is symptomatic of a pervasive, but understudied, compliance problem.³ Improving our understanding of Nanny Tax evasion is important, not only because it is a potentially significant source of Federal and State revenue leakage, but also because of its adverse implications for a particularly vulnerable class of workers that is predominantly female, relatively less educated, and generally of limited means. Among those who are legally authorized to work, the Nanny Tax serves as the pathway through which domestic workers access unemployment insurance, Social Security, Medicare, and other employment-related benefits. Being paid over the table also helps domestic workers to establish the credit needed to rent an apartment, purchase a car, obtain a mortgage, or secure a personal loan. At the same time, all the various labor market and social issues that surround the topic of illegal immigration are relevant, because a sizeable share of unauthorized immigrants support themselves and their families by providing personal services to households. Compliance with the Nanny Tax involves important interactions between a relatively well-off segment of the population and a relatively poor segment. These interactions are complicated by an inadequate understanding among both segments regarding their rights and responsibilities.

In this study, we perform a systematic and detailed analysis of the extent to which household employers fail to comply with their Federal Nanny Tax obligations. We find evidence of pervasive noncompliance. According to our estimates, only 5.3 percent of household employers file Schedule H (*Household Employment Taxes*) with their individual income tax returns and remit the required payroll taxes for their domestic employees. Overall, only \$1.1 billion in payroll taxes were remitted with Schedule H in 2015, leaving an estimated revenue gap of between \$2.4 billion and \$4 billion. Evidence from Consumer Expenditure Survey data on household expenditures for childcare in one’s own home suggests that the higher end of this range is quite plausible. When domestic workers are paid under the table, they are unlikely to pay income tax on their earnings. We estimate that the failure to report earnings from domestic work results in a Federal individual income tax gap of at least \$979 million and likely closer to double this amount. These estimates do not even account for unpaid State-level obligations of household employers for unemployment, disability, and workers’ compensation insurance or the unpaid State income tax obligations of their employees.

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² The FUTA tax rate is higher for employers who do not make timely State unemployment tax payments as well as for employers who reside in a credit reduction State.

³ For those interested in delving into other research on Nanny Tax compliance, see the excellent studies conducted by Bloomquist & An (2006) and Haskins (2010).

The remainder of this study is organized as follows. Section 2 reviews the historical trend in Schedule H filings, which points to a large and growing problem with Nanny Tax compliance. Section 3 provides a preliminary, albeit incomplete, picture of the domestic employee workforce based on Current Population Survey data on individuals who report that their longest job during the year was as a private household worker. Even this partial picture reveals evidence of a substantial compliance problem. In Section 4, we extend our analysis to account for individuals who moonlight as domestic workers and individuals who were employed as a private household worker for only a portion of the year (and who worked more hours at a different job). Accounting for these workers is challenging because we rely on the monthly Current Population Survey, which asks about employment status only at a point in time (the survey reference week).

In Section 5, we exploit the longitudinal sampling design of this survey to translate our point-in-time count of domestic workers into a count of individuals who worked for a private household at least for a portion of the year. In Section 6, we address several other measurement issues, including survey undercount of foreign-born residents, domestic workers with earnings below the Schedule H filing threshold, and domestic workers who have multiple employers (and hence are potentially associated with a separate Schedule H filing requirement among each of their employers). After accounting for these issues, we derive our estimate of Federal payroll tax filing noncompliance among household employers, which indicates that extremely few household employers comply with their filing requirements.

In Section 7, we develop estimates of the Federal payroll tax gap among household employers as well as the Federal individual income tax gap among household employees. Our estimates indicate a massive level of noncompliance. In Section 8, we examine statistics on household expenditures for in-home childcare based on the Consumer Expenditure Survey. The consistency of these reported expenditures with our estimates of domestic childcare worker earnings provides support for our Nanny Tax gap estimates. In Section 9, we summarize the demographic characteristics of domestic workers who are mostly female, and about 46 percent are foreign-born residents. The foreign-born domestic workers are almost evenly split between lawful and unlawful immigrants. In Section 10, we propose measures that the IRS should undertake to begin closing the Nanny Tax gap. Section 11 concludes.

2. Schedule H filing trend

Nanny Tax compliance became a subject of national attention and Congressional scrutiny following the withdrawal of Zoë Baird's nomination for Attorney General in 1993 stemming from revelations that she had illegally employed unauthorized immigrants as domestic workers and had also failed to file and remit the required payroll taxes.⁴ The ensuing investigations exposed that Nanny Tax evasion was, in fact, a widespread problem. Only approximately 500,000 household employers filed and remitted payroll taxes in 1994 (New York Times News Service (1998)). According to IRS estimates, this group of filers represented less than one-fourth of all household employers with a Federal payroll tax obligation (H.R. Rep. No. 103-491, 1994).

At that time, a household employer was required to file Form 942 (*Employer's Quarterly Return for Household Employees*) to report and remit Social Security and Medicare taxes for any domestic worker who was paid more than \$50 in cash wages during the calendar quarter. In addition, a separate annual filing of Form 940 was required to report and remit applicable FUTA taxes.⁵ Schedule H was introduced in Tax Year 1995 as a measure to reduce the Federal compliance burden faced by household employers and to improve their compliance. Under the new law, the employer now had to submit only a new form (Schedule H) with his annual individual income tax return to report all Federal payroll taxes for his domestic employees (including Social Security, Medicare, and FUTA taxes).⁶ As well, the \$50 quarterly threshold for Social Security and Medicare taxes was replaced by an inflation-indexed annual threshold of \$1,000, and babysitters under the age of 18 were exempted from all payroll tax requirements.⁷

⁴ Although it is against the law for a household employer to hire an unauthorized immigrant, the employer remains subject to all tax withholding, reporting, and remittance requirements, regardless of whether its employees have proper work authorization.

⁵ A quarterly remittance of FUTA taxes was required for employers who owed more than \$100 at the end of a calendar quarter.

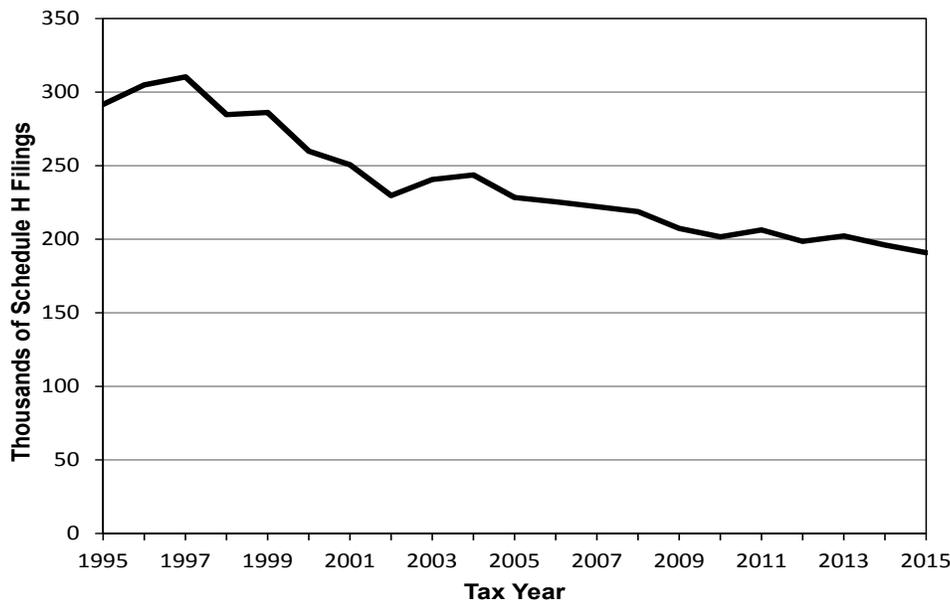
⁶ Household employers continue to have a requirement to report wages annually on Forms W-2 and W-3, and they must obtain an employer identification number (EIN).

⁷ An exception is that babysitters under the age of 18 who are not students and for whom childcare is their primary occupation are subject to Federal payroll taxation. Children under the age of 21 who are paid by their parents to babysit are also exempt from payroll taxes. Babysitting of grandchildren by grandparents is also generally exempt.

Although it was hoped that, by simplifying and streamlining the filing process, tax compliance would improve over time, the immediate outcome was that roughly 200,000 fewer household employers filed and remitted payroll taxes for Tax Year 1995—a 40-percent drop in filings. The reasons underlying this substantial decline are unclear. Certainly, some household employers no longer had a filing requirement owing to the increased filing threshold. However, few of the affected employers had been filing Form 942 in any case under the previous regime (Committee on Ways and Means (1993) p. 49). Under the new regime, household employers had to arrange for quarterly estimated tax payments (or request an increase in the amount of tax withheld by their own employers) to avoid a large combined payroll and income tax balance at the end of the year. Perhaps some of the employers who were caught off guard by this change may have omitted Schedule H from their returns to sidestep the unexpected tax obligation.

As shown in Figure 1, Schedule H filings grew only modestly over the next 2 years, with filings peaking at about 310,000 in Tax Year 1997. From that year on, Schedule H filings have declined precipitously, falling to slightly fewer than 191,000 by Tax Year 2015.⁸ As Bloomquist & An (2006) and Haskins (2010) have previously noted from this emerging trend, the sharp decline in Schedule H filings reflects a large and growing compliance problem.

FIGURE 1. Schedule H filings, Tax Years 1995–2015



3. Domestic work as a main job

One can obtain an initial, albeit incomplete, picture of the domestic employee workforce from the Annual Social and Economic Supplement of the Current Population Survey (CPS-ASEC). This annual survey collects socio-economic and demographic information for more than 180,000 members of a multistage probability sample of over 90,000 U.S. households each year. The information collected includes comprehensive details regarding employment and earnings associated with one's longest-held job during the preceding calendar year. Domestic workers are assigned to the four-digit industry category 9290 (Private Household Workers) in the CPS-ASEC, which corresponds to the three-digit North American Industry Classification System (NAICS) industry category 814.

⁸ Filing statistics were obtained from the annual *IRS Statistics of Income Individual Income Tax Returns*, Publication 1304, for Tax Years 1995-2015 (Internal Revenue Service (1997-2017)).

As indicated in Table 1, almost three-quarters of a million workers over the age of 17 had a longest-held job in this industry in 2015.⁹ Over three-quarters of those were maids/housekeepers or childcaregivers.

TABLE 1. Individuals over age 17 who were employed as domestic workers in their longest-held job in 2015

| Occupation | Number of Employees | Percentage of Total |
|-------------------------|---------------------|---------------------|
| Maid/Housekeeper | 342,613 | 46.7% |
| Child Caregiver | 223,640 | 30.5% |
| Personal Home Care Aide | 116,903 | 15.9% |
| Other Miscellaneous | 50,488 | 6.9% |
| Total | 733,645 | 100.0% |

Based on their reported earnings, over 637,000 of these 734,000 domestic workers earned more than the Tax Year 2015 Nanny Tax threshold of \$1,900. Thus, even if we were to restrict our attention to one's longest-held job during the year and assumed that each domestic employee had a single household employer, we would conclude that at least 637,000 household employers were potentially subject to Federal Nanny Tax filing requirements for Tax Year 2015. Therefore, the fact that fewer than 191,000 Schedule H returns were filed for this year points to a serious compliance problem.

Below, we undertake a more comprehensive analysis to obtain a clearer picture of the actual scope of the problem. To the extent possible, we exploit data on moonlighters and job changers, survey undercounts of unauthorized immigrants, and industry classification challenges to estimate the degree to which household employers comply with Federal filing and remittance requirements. We also estimate the amount of Federal individual income tax that goes unpaid by their employees on their earnings. Our estimates, while conservative, indicate massive noncompliance. We conclude by offering some suggestions for improving compliance.

4. Accounting for moonlighters and job changers

The analysis presented in Section 3 was restricted to workers who reported that their longest-held job in 2015 was as a domestic employee. Therefore, it did not account for individuals who moonlighted as domestic workers or those who worked for a household employer for a portion of the year but worked for a longer portion of the year at a different job. To address these issues, we rely on the monthly Current Population Survey (CPS). Under the *monthly* survey program, socio-economic and demographic information is collected regarding approximately 130,000 residents from a multistage probability sample of roughly 50,000 households from the overall civilian noninstitutional population. Information on the main job held during the prior week is collected for all individuals over the age of 15. Table 2 presents the weighted monthly counts of all individuals over the age of 17 who reported working as a domestic employee on their main job in 2015.¹⁰ The counts range from about 719,000 to 922,000, depending on the survey month. The weighted average count across months is approximately 790,000. This figure is larger than the CPS-ASEC estimate of 734,000 individuals with a longest-held job as a domestic worker in 2015. This makes sense, because the monthly CPS figures reflect the main job held by an individual during the reference week, which is not necessarily the longest-held job over the course of the year.

The monthly CPS survey also asks about any work performed on a second job during the prior week for about one-fourth of all individuals over the age of 15 (the “outgoing rotation group”). The weighted average

⁹ The CPS-ASEC and monthly CPS public-use files were retrieved from the National Bureau of Economic Research (NBER) Website: <http://www.nber.org/cps/>.

¹⁰ These counts include individuals who either were employed (regardless whether present or absent from work in the prior week) or on layoff.

number of individuals who reported holding a second job as a domestic employee during the survey reference week (but not their main job) in 2015 is 68,861. Thus, an average of almost 859,000 individuals reportedly held either a main or a second job as a domestic employee in any given month of 2015.

TABLE 2. Weighted monthly counts of domestic workers over age 17 in 2015 based on main job held in prior week

| Month | Number of Workers |
|-------------------------|-------------------|
| January | 922,107 |
| February | 824,581 |
| March | 782,102 |
| April | 786,073 |
| May | 754,253 |
| June | 843,771 |
| July | 765,204 |
| August | 807,014 |
| September | 718,653 |
| October | 799,012 |
| November | 745,001 |
| December | 730,612 |
| Weighted Average | 789,858 |

A limitation of these monthly figures is that they capture employment status only at a single point in time during the year. Consequently, they fail to identify individuals who worked as a domestic employee over a portion of the year, but not during the survey reference week. This issue is addressed below in Section 5.

5. Adjusting for point-in-time measurement limitations

To examine the extent to which the monthly CPS point-in-time measures of domestic employment from Section 4 understate the number of individuals who worked at least a portion of the year as domestic workers, we take advantage of the longitudinal nature of the CPS sampling design. The monthly survey includes eight panels or rotation groups, with two new groups brought into rotation each month and two retired. Households in each rotation group are interviewed once a month for 4 consecutive months and then are interviewed again during the same 4 months of the subsequent year. By appropriately matching individuals across the monthly surveys, one can therefore identify how an individual's employment status varies over different months. To perform these matches, we have relied on the matching variable "CPSIDP" provided by IPUMS-USA (see King, *et al.* (2010)) as well as the CPS measures of reported gender, race, and age. By matching individuals across the 12 monthly surveys conducted in 2015, we can observe a given individual's employment status up to a maximum of four times, depending on the rotation group of the household and other factors.¹¹

Table 3 breaks down our sample of 387,094 matched survey respondents over the age of 17 by the number of consecutive months that they were interviewed in 2015.

¹¹ In addition, it is not possible to definitively match all individuals across the relevant monthly samples, owing to changes in household composition, sample attrition, and occasional coding errors in the data samples; however, the success rate is quite high.

TABLE 3. Unweighted frequencies of consecutive CPS monthly surveys in 2015 among matched individuals over age 17

| Number of Monthly Surveys | Frequency | Percentage of Total |
|---------------------------|----------------|---------------------|
| 1 | 60,310 | 15.6% |
| 2 | 52,296 | 13.5% |
| 3 | 61,165 | 15.8% |
| 4 | 213,323 | 55.1% |
| Total | 387,094 | 100.0% |

Rather than rely on a measure of whether an individual worked in a domestic occupation during the reference period of a single monthly survey, we would ideally like to employ a measure of whether the individual worked in a domestic occupation at any time during the year. As a step in that direction, we have computed the weighted average number of individuals who reported domestic work as their main job during any of the one, two, three, or four periods that they were subject to a CPS monthly survey in 2015.¹² This yielded an estimate of 1.19 million domestic workers, which is almost 34 percent higher than the previous estimate of 790,000 based on the weighted average number of respondents who reported having been employed as a domestic worker in their main job in a given survey month. Even this 1.19-million-worker estimate substantially understates the actual number of individuals who were employed as domestic workers at some point over the course of the entire year, because the respondent reported only his or her employment status on 4 or fewer consecutive monthly surveys during the 12-month period.

To better understand the limitations of relying on a single point-in-time measurement to infer employment status over a period spanning many months, consider the subsample of 1,001 individuals who were the subject of 4 separate monthly surveys during 2015 and who reported employment as a domestic worker in at least 1 of these 4 months. Each member of this subsample reported domestic employment status in 1, 2, 3, or 4 of the months. Column (A) of Table 4 breaks down the weighted percentage frequency associated with each of these outcomes.

All members of this subsample were employed in a domestic occupation for at least a portion of the 4-month interval over which they received the surveys. However, many of these individuals would be overlooked if one were to rely on a single monthly survey to reflect a respondent's employment status over the entire interval. For instance, Column (A) indicates that approximately one-third of the subsample reported having held a domestic job during only 1 of the 4 monthly surveys. Therefore, only 1 of the 4 monthly surveys (or 25 percent of the surveys) provides an indication that a member of this group was a domestic worker for at least a portion of the 4-month interval. Likewise, only 50 percent of the 4 monthly surveys correctly reflect this status among the 17-percent share of the subsample that reported domestic employment in 2 of the 4 interview months, and only 75 percent of the 4 monthly surveys correctly reflect this status among the 13-percent share of the subsample that reported domestic employment in 3 of the 4 interview months. The correct status would be consistently assigned in each month only for the 37-percent share of the subsample that reported domestic employment during all 4 monthly surveys. Therefore, if assignment of domestic employment status were based on individual monthly responses, members of the overall subsample would be correctly assigned as having been employed as a domestic worker at some point over the 4-month interval only about 63 percent of the time. In other words, the actual count of individuals who served as domestic workers for at least some portion of the 4-month interval would be understated by approximately 37 percent.

¹² For this calculation, each individual sample weight was computed as the sum of the weights across the months that the individual was sampled, divided by 12.

TABLE 4. Weighted percentage of months with correct assignment of domestic-worker status over 4 months in 2015 by number of monthly reports of domestic employment during reference period, individuals over age 17

| Number of Monthly Reports of Domestic Employment | Weighted Percentage Frequency (A) | Percentage of Months Correctly Assigned as a Domestic Worker (B) | (A) Times (B) |
|--|-----------------------------------|--|---------------|
| 1 | 33.34% | 25% | 8.3% |
| 2 | 16.96% | 50% | 8.5% |
| 3 | 12.82% | 75% | 9.6% |
| 4 | 36.88% | 100% | 36.9% |
| Total | 100.00% | N/A | 63.3% |

N/A: Not applicable

The reason that the previously-mentioned panel-based estimate implies a somewhat smaller percentage understatement (34 percent) is that some respondents were interviewed over fewer than 4 consecutive monthly surveys. In such cases, the respondents were assigned to domestic-worker status based on their employment status over an interval of shorter than 4 months, thereby misrepresenting their true status over the entire 4-month period in some instances.

In practice, we would like to estimate the number of individuals who served as a domestic worker over any portion of 2015, not just during an interval of 4 consecutive months during the year. To obtain a better sense of the extent to which assignment based on individual monthly responses leads to an understatement of this count, we have extended the CPS panel to include members of the monthly surveys from July 2014 through June 2016. Over this period, a given individual would have been included in up to 8 monthly surveys. Table 5 repeats the analysis presented in Table 4 for the 463 individuals who participated in 8 monthly surveys over this period. The results indicate that if our objective were to obtain a (weighted) count of the number of these individuals who held a job as a domestic worker over at least a portion of the 8 interview months, assignment based on the individual monthly responses would understate the actual count by approximately 58 percent, meaning that the true count would be roughly 2.4 times as large as the computed count.¹³

TABLE 5. Weighted percentage of months with correct assignment of domestic worker status over 8 survey months between July 2014 and June 2016 by number of monthly reports of domestic employment during reference period, individuals over age 17

| Number of Monthly Reports of Domestic Employment | Weighted Percentage Frequency (A) | Percentage of Months Correctly Assigned as a Domestic Worker (B) | (A) Times (B) |
|--|-----------------------------------|--|---------------|
| 1 | 31.52% | 12.5% | 3.94% |
| 2 | 12.93% | 25.0% | 3.24% |
| 3 | 11.24% | 37.5% | 4.22% |
| 4 | 21.71% | 50.0% | 10.86% |
| 5 | 1.83% | 62.5% | 1.14% |
| 6 | 4.05% | 75.0% | 3.04% |
| 7 | 6.73% | 87.5% | 5.89% |
| 8 | 9.99% | 100.0% | 9.99% |
| Total | 100.00% | N/A | 42.30% |

N/A: Not applicable

¹³ From Table 5, the overall chance of correctly identifying private household worker status is only 42.3 percent, implying an understatement of approximately 58 percent. Note that if we instead wanted to estimate the number of individuals who held a job as a domestic worker over at least a portion of the full 16-month period, this adjustment factor would be too small, because it implicitly assumes that anyone with this status would have been working as a domestic employee at some point during the 8 interview months, ignoring those who worked as a domestic employee only at some time during the 8 noninterview months. In fact, the adjustment factor also does not take into account that the monthly interview covers only a 1-week reference period, thereby ignoring the possibility of employment as a domestic worker during 1 or more weeks of the interview month, but excluding the reference week.

This analysis involving individuals who were surveyed during 8 different months at least approximates the ideal situation in which individuals are surveyed in each month of a given year. Overall, it is reasonable to assume that 2.4 is a conservative adjustment factor for translating our weighted average CPS monthly count of individuals who worked as domestic employees during the reference week into an estimated count of individuals who worked at least a portion of Calendar Year 2015 as domestic employees. Applying this adjustment factor to our initial count of 859,000 individuals who worked as domestic employees in their main or second job during the reference week yields an estimated count of 2.06 million individuals who held a domestic job during at least a portion of 2015.

6. Additional adjustments

In this section we address the issues of survey undercount of foreign-born residents, domestic workers with annual earnings below the Schedule H filing threshold, and domestic workers with multiple household employers. After accounting for these issues, we compare our estimate of the number of required Schedule H filings in 2015 to the actual number of filings. The results suggest that only about 5 percent of all household employers comply with their Federal payroll tax obligations.

6.1 Survey undercount

Foreign-born residents are disproportionately represented within the domestic worker population. At the same time, they are underrepresented in national surveys, such as the CPS and the American Community Survey (ACS). To address this undercount problem, we rely on Pew Research Center estimates (DeSilver (2017); Passel and Cohn (2016)), which suggest that foreign-born private household workers are undercounted by approximately 4.2 percent. Applying this adjustment factor to foreign-born domestic workers in the monthly CPS samples modestly increases our overall estimate from Section 5 from 2.06 million domestic workers in Calendar Year 2015 to approximately 2.1 million.¹⁴

6.2 Annual earnings below Schedule H filing threshold

Although \$1,900 is a rather modest annual earnings threshold for a Schedule H filing requirement, not all 2.1 million workers would have reached this threshold. After adjusting for undercount of foreign-born residents, our estimate based on CPS-ASEC is that 649,000 of the roughly 746,000 individuals (87 percent) whose longest-held job in 2015 was as a private household worker had domestic employment earnings of more than \$1,900. Multiplying 2.1 million by this percentage yields an estimated 1.82 million domestic workers associated with at least one Schedule H filing requirement.¹⁵

6.3 Domestic workers with multiple employers

Table 6 breaks down by occupation this overall estimate of 1.82 million individuals over the age of 17 who earned more than \$1,900 from a main or second job as a domestic worker in 2015. As the combined CPS monthly sample size is quite large, it is feasible to provide a somewhat more detailed breakdown of occupation categories than was possible with the CPS-ASEC sample in Table 1. The occupation shares based on the main and second job presented in Table 6 are quite similar to those presented in Table 1 for the longest-held job over the course of the year. Again, the highest shares are associated with maids/housekeepers (45.8 percent), child-caregivers (30.1 percent), and personal home care aides (16.4 percent). Nurses and home health aides, cooks and food preparation workers, and other domestic occupations, such as gardeners and drivers, account for the remaining 7.7 percent.

Since many domestic workers are employed by multiple households, the number of required Schedule H returns is expected to be much larger than 1.82 million. For instance, it is common for housekeepers to clean

¹⁴ This adjustment for survey undercount is conservative. A recent study by Fazel-Zarandi, Feinstein, and Kaplan (2018) suggests that the undercount rate is much larger.

¹⁵ We believe that this is a conservative estimate owing to the reluctance of domestic workers who are paid under the table to disclose the true amount of their earnings on a survey or even acknowledge that they had employment earnings at all. See the discussion in Section 8.

many different homes over the course of a week. As well, many childcare providers work in temporary or nanny-sharing arrangements over the course of the year. Table 6 includes a conservative estimate of the average number of employers for whom different occupations of domestic employees work, based on figures that a Nanny Tax preparation service has shared with us concerning its actual client experience.¹⁶

TABLE 6. Number of domestic employees, average number of employers, and estimated number of required Schedule H filings by occupation

| Occupation | Number of Domestic Workers | Percentage Frequency | Average # Employers | Total # Employers |
|--|----------------------------|----------------------|---------------------|-------------------|
| Maid/Housekeeper | 834,111 | 45.8% | 3.0 | 2,502,332 |
| Child Caregiver | 549,214 | 30.1% | 1.5 | 823,821 |
| Personal Home Care Aide | 298,698 | 16.4% | 1.1 | 328,568 |
| Nurse/Therapist/Health Aide | 32,818 | 1.8% | 1.1 | 36,100 |
| Cook/Food Prep. Worker | 13,857 | 0.8% | 1.1 | 15,242 |
| Other Miscellaneous | 93,734 | 5.1% | 1.1 | 103,108 |
| Total | 1,822,432 | 100.0% | 2.1 | 3,809,171 |
| Actual Number of Schedule H Filings | 190,852 | | | |
| Required Number of Schedule H Filings | 3,619,000* | | | |
| Schedule H Filing Rate | 5.3% | | | |

* Accounts for employers with multiple domestic employees during the year

Applying these figures, we estimate that these 1.82 million domestic employees had approximately 3.8 million household employers. However, the required number of Schedule H filings would be somewhat fewer than 3.8 million, because household employers with more than one employee over the course of the year are required to make only a single Schedule H filing.¹⁷ To address this issue, we adjust our estimate downwards by 5 percent (to 3.6 million) based on client statistics on the share of Schedule H filings covering more than one employee that were provided to us by a Nanny Tax preparation service.

Since only about 191,000 Schedule H returns were filed for Tax Year 2015, we estimate a filing compliance rate of only 5.3 percent, which is roughly comparable to the dismal level of compliance that States currently experience with respect to their consumer use taxes.

7. Federal payroll and individual income tax gaps

In this section we develop an estimate of the tax gap associated with payroll taxes that go unreported by household employers. Often, when domestic workers are paid cash wages under the table, they fail to report the individual income tax on these earnings. We therefore also provide an estimate of the potential individual income tax gap among domestic employees.

7.1 Payroll tax gap

To estimate the Federal payroll taxes for which household employers are responsible, it is necessary to estimate the annual earnings of their employees. Aggregate reported earnings were \$11.57 billion (\$17,822 per worker) among those CPS-ASEC respondents over the age of 17 who indicated that their longest-held job in 2015 was as a domestic worker and who had annual earnings over \$1,900. This tabulation based on longest-held jobs accounts only for 649,337 of the estimated 1.82 million individuals who worked at least a portion of the year

¹⁶ Household employers who use Nanny Tax preparation services are presumably more likely to have full-time permanent help than household employers who do not use these services. As a result, these figures are likely to understate the overall number of household employers in the population who rely on part-time and temporary workers.

¹⁷ A small number of household employers may choose instead to file Form 941 on a quarterly basis for their domestic employees. However, this is likely to be rare, so that my estimates remain conservative.

as domestic employees. Social Security and Medicare taxes are applied at a combined rate of 15.3 percent. For employers who make timely State unemployment insurance contributions and who do not reside in a credit reduction State, the FUTA tax rate is 0.6 percent. Therefore, the combined estimated payroll tax obligations for these 649,337 domestic workers, alone, amount to more than \$1.84 billion ($0.159 \times \11.57 billion).

It is difficult to assess how the annual household employment earnings of individuals who moonlighted as domestic workers or worked only a portion of the year in a private household setting (and worked a larger portion of the year in a different job) compare to those who were employed as domestic workers on their longest-held job. It seems plausible that they would have somewhat lower annual earnings from domestic employment. On the other hand, individuals may be reluctant to acknowledge and divulge under-the-table earnings on a survey, so it seems likely that our \$17,822 estimate for average earnings from a longest-held-job as a domestic worker is, itself, understated. Consequently, \$17,822 is perhaps too low a figure for those whose longest-held job was as a domestic worker and perhaps too high a figure for those who worked as domestic workers in a position different from their longest-held job. In Table 7, we employ \$17,822 as an upper bound for the average annual wage of individuals who worked as domestic employees outside of their longest-held job in 2015. This would be an appropriate estimate if the above-described errors cancel out. For our lower bound estimate, we make the more conservative assumption that average annual earnings for such workers are only half as large (\$8,911) as the average reported annual earnings among those employed as private household workers in their longest-held job. As shown in the table, these assumptions imply that aggregate required payroll taxes for those working as domestic employees outside of the longest-held job in 2015 amounted to between \$1.66 billion and \$3.32 billion. Adding in the estimated \$1.84 billion in required payroll taxes for those who reported working as domestic employees in their longest-held job, we arrive at a total payroll tax obligation of between \$3.5 billion and \$5.2 billion for all domestic workers combined.

TABLE 7. Federal payroll tax gap among household employers, Tax Year 2015

| Item | Longest-Held Job | Other Job Lower Bound | Other Job Upper Bound | All Jobs Lower Bound | All Jobs Upper Bound |
|--------------------------------------|------------------|-----------------------|-----------------------|----------------------|----------------------|
| Number of Employees | 649,337 | 1,173,095 | 1,173,095 | 1,822,432 | 1,822,432 |
| Average Wages | \$17,822 | \$8,911 | \$17,822 | \$12,086 | \$17,822 |
| Aggregate Wages (\$ Billions) | \$11.57 | \$10.45 | \$20.91 | \$22.03 | \$32.48 |
| Payroll Taxes Owed (\$ Billions) | \$1.84 | \$1.66 | \$3.32 | \$3.50 | \$5.16 |
| Payroll Taxes Remitted (\$ Billions) | | | | \$1.13 | \$1.13 |
| Payroll Tax Gap (\$ Billions) | | | | \$2.37 | \$4.03 |
| Compliance Rate | | | | 32.4% | 22.0% |

Household employers remitted only \$1.13 billion in payroll taxes with Schedule H in Tax Year 2015, leaving an estimated payroll tax gap of between \$2.4 billion and \$4 billion. In Section 8, we provide evidence from the Consumer Expenditure Survey that supports an estimate closer to the upper end of this range.

7.2 Individual income tax gap

We have developed a CPS-ASEC tax calculator to estimate the net Federal individual income tax after refundable credits (specifically, the Earned Income Credit and the Additional Child Tax Credit) for domestic workers (and their spouses, in the case of joint filing status) both inclusive and exclusive of domestic employment earnings.¹⁸ For the 649,337 individuals who report having a longest-held job during 2015 as a domestic worker, we estimate that the average income tax liability amounted to \$1,606 per worker when earnings from domestic employment were included, but only \$442 per worker when these earnings were excluded. Thus, the

¹⁸ Unauthorized workers are not eligible for the Earned Income Credit (EIC). To address this, some foreign-born private household employees in our sample were randomly assigned as unauthorized workers and were denied the EIC in our tax calculations.

lion's share of the overall tax bill (\$1,164) was attributable to their domestic employment earnings. Based on these figures, domestic workers were subject to an average Federal income tax rate of 6.58 percent on those earnings.¹⁹

In Table 8, we apply this average tax rate estimate of 6.58 percent to the earnings of all domestic workers to compute their aggregate tax liability.²⁰ Our calculations rely on the same lower and upper bound estimates of earnings that were used to compute payroll taxes in Table 7. The results indicate that domestic workers owed between \$1.45 billion and \$2.1 billion in aggregate income taxes on their employment earnings. We assume that domestic workers paid their income taxes on these earnings only when their employers remitted the associated payroll taxes. In the previous subsection, payroll taxes were paid on 32.4 percent of earnings based on the lower bound wage estimate and 22 percent based on the upper bound estimate. Under both the lower and upper bound scenarios, this implies an aggregate income tax payment of approximately \$470 million. After deducting taxes paid from taxes owed, we arrive at an estimated Federal individual income tax gap ranging from \$979 million to \$1.7 billion.

TABLE 8. Federal individual income tax gap (in \$ Millions) associated with domestic employment earnings, Tax Year 2015

| Item | Lower Bound | Upper Bound |
|-------------------------------|--------------|--------------|
| Aggregate Wages | 22,030 | 32,480 |
| Income Tax on Aggregate Wages | 1,449 | 2,135 |
| Amount of Tax Paid | 470 | 470 |
| Income Tax Gap | 979 | 1,666 |
| Compliance Rate | 32.4% | 22.0% |

7.3 Summary of Nanny Tax gap estimates

Household employers are required to file Schedule H annually with their individual income tax returns to report and remit the Federal payroll taxes for their employees. As indicated in Table 9, however, we estimate that only 5.3 percent of household employers comply with this requirement.

TABLE 9. Estimated Schedule H filing compliance rate, Tax Year 2015

| Measure | Thousands of Schedule H Returns |
|----------------------|---------------------------------|
| Actual returns filed | 191 |
| Required returns | 3,619 |
| Filing rate | 5.3% |

Table 10 summarizes our estimates from Subsections 7.1 and 7.2 of the Federal Nanny Tax gap for Tax Year 2015. We estimate that household employers failed to report and remit between \$2.4 and \$4 billion in Federal payroll taxes for that year. When household employers pay their workers under the table, the employees are unlikely to report those earnings on their income tax returns. We estimate that this resulted in between \$979 million and \$1.7 billion in unpaid Federal individual income taxes for Tax Year 2015. Overall, then, the combined estimated Federal payroll and individual income tax gap associated with household employment ranges from \$3.35 billion and \$5.7 billion in that year, which implies that only 22 percent to 32.4 percent of all required taxes were reported and paid. As discussed below in Section 8, evidence we have derived from the Consumer Expenditure Survey suggests that the upper bound of this range is quite plausible.

¹⁹ The average tax rate on domestic earnings was close to 10 percent prior to the application of refundable credits.

²⁰ Note that we ignore potential income taxes on the wages of domestic workers whose earnings fell below the \$1,900 annual Nanny Tax threshold.

TABLE 10. Estimated Federal Nanny Tax gap (in \$ Millions), Tax Year 2015

| Tax Source | Lower Bound | Upper Bound |
|------------------------|--------------|--------------|
| Payroll Taxes | 2,370 | 4,029 |
| Employee Income Taxes | 979 | 1,666 |
| Total Tax Gap | 3,349 | 5,695 |
| Compliance Rate | 32.4% | 22.0% |

8. Evidence from the Consumer Expenditure Survey

To assess whether an individual was employed as a domestic worker, the CPS interviewer must collect information relating to the identity of the employer (i.e., that the person works directly for a household and not, say, for an incorporated business), the location where the work is performed (i.e., that the work is performed at the employer's own home), and the nature of the work. Individuals who are not authorized to work and those who are being paid under the table may be reluctant to share such details during an interview. Indeed, the CPS Interviewing Manual (U.S. Census (2015)) anticipates this problem. It states:

“Census employees in Jeffersonville, Indiana assign industry codes based on the employer name and the business or industry description you provide. Though some respondents are reluctant to provide the name of their employer, this information is very helpful in assigning the correct industry code. Without badgering the respondent, make every effort to collect this information. In some cases it may only be necessary to reassure respondents of the confidentiality of the survey data.” (p. B4–4)

The interviewing manual also cautions:

“Some respondents may be reluctant to provide information about themselves or family members or may refuse to be interviewed. It is your job to sell the survey.” (p. A2–6)

In practice, it seems unlikely that the interviewer will be successful in “selling the survey” in every instance involving a reluctant respondent. As a result, it is reasonable to expect that some respondents will not disclose sufficient information to permit an inference that the individual was a domestic worker when this was, in fact, the case. Likewise, some respondents are likely to understate their earnings from such employment or report that they had no earnings.

As a check on our CPS-based estimates of the income *earned* by domestic workers, we have developed an estimate of the amount *spent* by households on childcare assistance in their own home using the Consumer Expenditure Survey (CEX). Although household employers may be reluctant to reveal childcare expenses that they have paid under the table, it seems likely that they would be somewhat less averse to report such transactions than their employees. Our CEX-based estimate is that households spent \$9.4 billion for childcare assistance in their own home in 2005.²¹ Although a portion of this amount represents payments to relatives or au pairs for babysitting, which are generally not subject to Nanny Tax, or domestic employee wages that fell short of the \$1,900 Schedule H filing threshold, most of it is attributable to annual payments to nonexempt domestic employees who earned more than \$1,900. Based on the estimated count of 549,214 private household childcare workers from Section 5, this implies average annual earnings of \$17,115, which is within 4 percent of the average annual earnings reported in the CPS-ASEC among individuals who have indicated that their longest-held job was as a domestic childcare provider (\$17,822). This finding suggests the upper ends of the estimated ranges of the household employer tax gap (\$4 billion) and the domestic worker individual income tax gap (\$1.7 billion) are quite plausible.

²¹ Estimated expenditures on childcare, both inside and outside of the home, amounted to \$14.9 billion in 2015. The CEX last broke down separate estimates for childcare expenditures inside and outside of the home in 2012. In that year, babysitting, nanny services, or childcare inside the home accounted for almost 64 percent of the combined expenditures inside and outside of the home. Applying this percentage to combined estimated childcare expenditures of \$14.9 billion in 2015 yields \$9.4 billion in estimated expenditures on care inside the home.

9. Demographic characteristics of domestic workers

Table 11 presents summary statistics on the demographic characteristics of private household workers in 2015 based on the weighted monthly CPS surveys. Strikingly, almost 93 percent are female and approximately 46 percent are foreign born. According to estimates from Pew Research Center (Passel and Cohn (2016)), almost half of all foreign-born domestic workers are unauthorized immigrants.

TABLE 11. Demographic characteristics, private household workers over age 17, Tax Year 2015

| | | |
|-----------------|----------------------|------|
| Gender | Percent Female | 92.6 |
| Race | Percent White Only | 82.0 |
| | Percent Black Only | 9.3 |
| Nativity | Percent Foreign Born | 45.7 |
| Age | Mean Age | 42 |

10. Closing the Nanny Tax gap

Most people devote substantial time and effort to hiring the right person to come into their home and look after their children, care for an aging parent, or clean their house. They prepare job descriptions, search for leads on potential job candidates, solicit and review applications, conduct interviews, check references, and carry out background checks—all in an effort to determine whether a prospective employee is likely to be capable, trustworthy, and responsible. Yet relatively few put similar effort into researching their own responsibilities as household employers.

The extremely poor state of compliance with the Nanny Tax should be of concern to tax administrators, policymakers, and other stakeholders—not only because it is a fairly substantial source of revenue leakage, but also because it represents a significant hole in the safety net for a relatively poor and vulnerable group of workers. In this section, we discuss measures that the IRS should undertake to encourage household employers to begin minding the Nanny Tax and their employees to comply with their income tax obligations.

10.1 *The knowledge gap*

One barrier to compliance is that many household employers are blissfully ignorant of their Nanny Tax responsibilities. Consequently, they often misunderstand the rules regarding whether a worker is an employee or an independent contractor, as well as the regulations concerning the employment of unauthorized immigrants. These immigrants, themselves, often misperceive that filing and paying income taxes on their earnings will result in an immigration enforcement response. Each of these misperceptions contributes to the tax compliance problem.

Misconceptions regarding employment status

Frequently, employers mistakenly assume that their domestic workers are self-employed independent contractors and that they therefore have no responsibility to file information returns or collect and remit payroll taxes on their behalf. Many domestic employees also incorrectly assume that they are self-employed, although they may not fully understand or fulfill the tax requirements that accompany self-employment status. In fact, over 60 percent of the workers who have been classified as private household employees in the 2015 American Community Survey have identified themselves as self-employed.

Much of this confusion is attributable to the lack of clear and well-publicized guidelines. Although portions of the available IRS publications on household employment are sufficiently clear to dispel some common misconceptions regarding employer and employee rights and responsibilities, other portions are so vaguely written that even a highly compliance-oriented individual might come to the wrong conclusion about whether a household worker is really an employee. Consider, for example, the guidance provided in the IRS bulletin for Tax Topic Number 756 (*Employment Taxes for Household Employees*) that is provided on its Website (Internal

Revenue Service (2018b)). The first portion of this document addresses the distinction between a household employee and an independent contractor:

“Household employees include housekeepers, maids, babysitters, gardeners, and others who work in or around your private residence as your employee. Repairmen, plumbers, contractors, and other business people who provide their services as independent contractors, are not your employees. *Household workers are your employees if you can control not only the work they do but also how they do it* (emphasis added).”

One might (correctly) reason from this brief description that, since domestic workers who are hired by a homeowner are generally subject to the homeowner’s supervision and guidance, they should in most cases be classified as employees. However, some household employers who give their domestic workers relatively free reign in performing their duties might be led to conclude from this brief description that their workers are not employees, but are instead self-employed independent contractors. Surprisingly, this is the full extent of the guidance that is provided in this tax topic bulletin on this vital and commonly misunderstood issue. Even more remarkably, the reader is not even referred to another information source for further details on how to effectively apply this principle to conclusively determine whether a household worker is truly an employee.²²

A somewhat more detailed, but still inadequate, treatment of this issue is provided in IRS Publication 926 (*Household Employer’s Tax Guide*; IRS (2018a)). To the IRS’s credit, this publication does address several common misconceptions regarding the employment status of domestic workers. For instance, it clarifies that the Nanny Tax applies to part-time as well as full-time employees, and it remains applicable regardless of the terms of payment (hourly, daily, weekly, or by the job). When employers hire their caregivers through an agency, they sometimes incorrectly assume that the agency will serve as the employer. While some home care agencies do oversee caregivers and act as their direct employers, the services of many placement agencies and registries are limited to referrals and other nonsupervisory tasks (such as background screening). In such cases, the household serves as the direct employer of the caregiver, not the placement agency or registry. Publication 926 properly cautions that one may have a Nanny Tax responsibility even if the domestic worker was hired through an agency or a list provided by an agency or association.

Unfortunately, Publication 926 is much less definitive when it comes to explaining how one can distinguish a household employee from an independent contractor. While it does provide some clarity with respect to a couple of common household employment situations, it fails to resolve ambiguity and confusion in many others. As with the *Employment Taxes for Household Employees* bulletin, Publication 926 emphasizes the common law principle that a domestic worker is one’s employee if “you can control not only what work is done, but how it is done” (p. 3). However, this publication goes a bit further by also illustrating the application of this principle to a couple of hypothetical scenarios. One scenario concerns a household worker who performs both babysitting and light housework services. In this scenario, the worker is provided with specific instructions on how to perform her duties as well as equipment and supplies to do the work. This combined provision of specific instructions, equipment, and supplies by the employer is presented as evidence of control over both what work is to be performed and how it is to be performed. The worker in this scenario is therefore identified as a household employee. While this example is adequate to clarify the employment status of many typical caregivers that are hired by households, it does not resolve the uncertainty regarding employment status in many other cases. For instance, one might wonder from this example whether the provision of both specific instructions and supplies by the homeowner are required to establish an employer-employee relationship, or if instead the provision of either one would suffice. For instance, if a housekeeper brings her own equipment and supplies but follows specific cleaning instructions provided by the homeowner, would she be considered an employee or an independent contractor? How about a babysitter who is largely unsupervised but who relies on items supplied by the homeowner (food, toys, games, etc.) in the process of caring for the child?

As an illustration of a household worker who is not an employee, Publication 926 introduces a second scenario involving an individual who operates a lawn care business and offers his services to the general public.

²² The remainder of this IRS tax topic bulletin covers the filing and remittance responsibilities of household employers, which presumably will be read only if the employer has concluded that its domestic worker is an employee. In these sections, the reader is referred to Publication 926 and certain other IRS publications for additional details on these requirements. However, it is a rather remarkable oversight that a similar reference to a more detailed information source is not provided in the portion of the bulletin that concerns the vital issue of employment status.

This individual provides his own tools and supplies, and he hires helpers to assist with the work. In this case we learn that neither this individual nor his helpers are household employees. Although this example clarifies employment status under a fairly typical lawn service situation, it does little to remove uncertainty regarding other common situations. For instance, suppose that the lawn care provider did not hire additional helpers, would he still be an independent contractor? How about if he provided his own gas and oil but used the homeowner's lawnmower or blower? One cannot be sure based on the information that has been provided.

Those who remain confused about what constitutes an employer-employee relationship after reading Publication 926 are referred to sections 1 and 2 of IRS Publication 15-A (*Supplemental Employer's Tax Guide*, IRS, 2017a). In Section 1 of this guide, we learn that it does not matter whether you control how the work is done, so long as you have a right to do so:

“An individual is generally your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.”
(p. 5)

This is an important distinction, because it means that a domestic worker is deemed to be an employee so long as one has the authority to give explicit instructions, regardless of whether any explicit instructions are provided. The failure to explain this distinction in the previously discussed tax publications could lead some household employers to assume wrongly that their domestic helpers are independent contractors. Consider, for instance, the aforementioned example of household employers who elect to give their domestic workers relatively free reign in carrying out their duties.

Section 2 of this supplemental guide describes various factors that should be considered when assessing the degree to which a worker is subject to behavioral control (such as whether the worker is told what tools to use or what hours to work) or financial control (such as whether the worker has made a significant investment in tools and equipment or has an opportunity to realize a profit). In addition, there is a discussion of relevant indicators of the type of relationship between the parties, such as the presence of a contract that specifies the terms of the relationship, the presence of employee-type benefits (such as sick pay or vacation pay), or whether the engagement is for a specified period or indefinite. To illustrate how to apply these factors to assess whether a worker is an employee, a number of examples are provided. Notably, however, not one of them concerns the case of a domestic worker. Moreover, the limited discussion of the presence of a contract as a relevant factor in assessing employment status might feed into the commonly held misconception that a household employer can legally dodge the Nanny Tax simply by executing a contract that designates the employee as an independent contractor. Therefore, even this more detailed publication falls short of providing household employers with clear and adequate guidance regarding what constitutes an employer-employee relationship.

From the perspective of the IRS, it seems as though the employment status of domestic workers actually has been a largely settled issue for quite some time. For instance, during the Congressional hearings that led to the introduction of Schedule H (Committee on Ways and Means (1993)), Maurice Washburn, the Compliance 2000 Executive of the IRS at that time, testified that domestic workers are almost always employees of the person in whose home they perform services, because that person “almost invariably” has the right to direct and control the performance of those services (p. 38). The one exception he notes is when a business organization, such as a commercial housecleaning company, has the right to direct and control how the services are carried out, in which case the housecleaning company is the employer, not the homeowner. Observe that the domestic worker is classified as an employee under both of these scenarios, not as an independent contractor. Assuming that this continues to be the position of the IRS today, it is puzzling that this position is not plainly stated in the IRS publications on this topic. The failure of the IRS to stake out a clear position on the employment status of household workers in its publications invites confusion and contributes to the ongoing compliance problems.

The IRS does offer one way to obtain clarity on a domestic worker's employment status. Either the household employer or the worker can file IRS Form SS-8 (*Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*) to request a determination of the worker's employment status. Unfortunately, however, this form was designed rather generically in the context of a firm that hires a worker, which makes it rather confusing for households and domestic workers to complete. In addition, a filer can expect it to take at least 6 months before a determination is provided by the IRS (Internal Revenue Service

(2017b)). Still, this is a valuable service from which many household employers and domestic workers could benefit. However, the IRS does not publicize its availability in the *Employment Taxes for Household Employees* bulletin or even in Publication 926, which are the two main publications that focus on household employment. (There is, at least, a brief mention of the service on page 8 of the *Supplemental Employer's Tax Guide*.) Of course, many household employers and employees would not have any need for this service in the first place if these publications were revised to provide clearer guidance on this issue.

Perhaps tellingly, Stephanie Breedlove (2013, p. 19) reports that her payroll tax service company, Care.com HomePay, has petitioned the IRS for employment status determinations under a wide range of domestic work scenarios using Form SS-8. She indicates that in every case, the IRS has deemed the worker to be an employee of the household.

Misunderstanding of regulations concerning unauthorized immigrants

Beyond the misconceptions regarding the employment status of household workers, there is also substantial confusion surrounding the employment of unauthorized immigrants. Unauthorized immigrants are estimated to represent only about 5 percent of the overall U.S. workforce, but they account for approximately 22 percent of all private household workers (Passel and Cohn (2016)), which means that the household workplace is an area where all the various labor market and social issues surrounding the topic of illegal immigration come to a head. Many household employers rely on a “don’t ask, don’t tell” policy when hiring unauthorized immigrants, hoping that ignorance of their work authorization status will shield them from any legal repercussions. In fact, though, household employers are legally obliged to verify a prospective employee’s eligibility to work and to complete USCIS Form I-9 (*Employer Eligibility Verification*) prior to making a hire.²³ As for household employers who do knowingly hire unauthorized domestic workers, there is often a misconception that the lack of legal work authorization exempts them from payroll tax requirements.

Many unauthorized immigrants fear that the payment of income and payroll taxes will trigger an immigration enforcement response. In fact, though, the IRS maintains the confidentiality of taxpayer records and issues Individual Taxpayer Identification Numbers (ITINs) to undocumented workers upon request to facilitate the filing and payment of taxes. Although unauthorized immigrants are not eligible for many social and tax-related benefits, such as Medicare, Social Security, or the Earned Income Credit, tax records provide documentation of their earnings history, which is needed when attempting to rent an apartment, purchase a car, qualify for a mortgage, or secure a personal loan. In addition, if a previously unauthorized worker later receives work authorization and is issued a Social Security Number, that worker can receive credit for the past Social Security contributions that were made during the period of unauthorized employment. Furthermore, should an unauthorized immigrant find herself before an immigration judge, a history of filing and paying taxes may improve the chances of a favorable adjudication (Blanco (2017)).

10.2 Addressing the knowledge gap

Clearly, then, the Nanny Tax gap is partly attributable to a knowledge gap. The IRS can help to close this knowledge gap by devoting more resources towards educating household employers and their employees about their rights and responsibilities. Much as the IRS has done for other tax issues associated with substantial compliance problems, such as the Earned Income Credit, it should engage in:

- Targeted information campaigns;
- Community outreach efforts; and
- Partnerships with other stakeholders, including tax preparers, State revenue administrations, and household employee advocacy groups.

These educational efforts should address confusion regarding independent contractor status, the importance of Social Security, Medicare, and unemployment benefits to domestic workers, employer payroll tax and

²³ These requirements are clearly explained in Publication 926 IRS (2018b, p. 3); however, employers of potentially unauthorized immigrants may not be inclined to seek out published guidance on this issue.

information reporting responsibilities, employee income tax reporting obligations, and the risks and penalties associated with noncompliance.

IRS publications on household employment should also be revised to state more plainly the Agency's position on the circumstances under which domestic workers are deemed to be household employees. Beyond improving these publications, the IRS should introduce an online application similar to the "employee/contractor decision tool" that the Australian Taxation Office makes available to its taxpayers (see <https://www.ato.gov.au/calculators-and-tools/employee-or-contractor/>). This easy-to-use application takes the user through a series of questions that lead to a clear determination of whether a worker is an employee or an independent contractor. Provided that the user has given accurate responses to the questions, the user can then rely on this determination for tax purposes. A record of the responses and the resulting determination can be downloaded by the user to demonstrate due-diligence in the event of an audit. Such an application would be relatively inexpensive for the IRS to develop and maintain, and it would serve as a fast, easy, and immensely helpful means for household employers and domestic workers to resolve their uncertainty over the employee-independent contractor issue.

As discussed previously in Subsection 10.1, the IRS position on household workers that was shared during the 1993 Congressional hearings on the Nanny Tax was that these workers are almost always employees of the person in whose home they perform services. Assuming this remains the IRS position today, it should explore working with lawmakers to establish a rebuttable presumption that an employer-employee relationship exists when a household hires a worker to perform personal services in or around the home. The burden would then be placed on the household to rebut this classification, for instance by providing evidence that the worker operates or is employed by a business that has the right to control how the work is performed.

The proposed outreach efforts and information campaigns should highlight the legal requirement for household employers to verify work authorization status and the potentially severe consequences for noncompliance. To the extent that household employers continue to employ unauthorized immigrants, it is important to reassure undocumented workers that filing an income tax return will not result in an immigration enforcement response and to inform them of the various benefits of establishing a tax filing history and paying their share of taxes (building consumer credit, demonstration of law-abiding behavior to reduce the potential for deportation, etc.). The IRS should team with other stakeholders to develop and implement effective strategies for outreach and information dissemination.

10.3 Reducing compliance burdens and increasing enforcement

Of course, the Nanny Tax gap is not entirely attributable to a knowledge gap. Many household employers are aware of their payroll tax responsibilities but choose not to comply, either because they feel that Federal and State filing and remittance requirements are too burdensome or because they simply do not want to bear the added expense associated with Federal and State payroll taxes. The introduction of Schedule H in 1995 did simplify compliance with Federal Nanny Tax requirements to some degree. However, it did nothing to address the State-level Nanny Tax compliance burden. It would certainly be desirable for the Federal and State tax administrations to explore ways to coordinate and simplify the overall compliance process. Although the best way to achieve that outcome will require investigation and deliberation, one approach to simplification would involve the introduction of uniform filing and remittance frequencies across jurisdictions. The payroll tax reporting process for employers of undocumented workers is another area that might be addressed. Some States will not accept wage reports and payroll tax filings that don't list an employee's SSN. Because undocumented workers are unable to obtain an SSN, their employers are effectively impeded from complying with their State payroll tax obligations. A uniform process across all jurisdictions for identifying undocumented workers for payroll tax and wage reporting purposes, such as the reliance on an ITIN, would make it easier for those who violate hiring laws to at least avoid also becoming tax evaders.

Outreach, education, and burden reduction are important elements of a strategy for reducing the Nanny Tax gap. Ultimately, however, enhanced enforcement of payroll tax return filing and remittance requirements is also needed to transform the culture of Nanny Tax noncompliance into one of compliance. Presently, even rather thorough tax audits, such as those conducted under the IRS National Research Program (NRP), fail to

uncover most instances of Nanny Tax evasion. Under the NRP, a large stratified random sample of Federal individual income taxpayers is audited for a given tax year. One of the purposes of this program is to measure the magnitude of tax noncompliance in the overall population with respect to the various income, deduction, and credit items on the tax return. Haskins (2010) reports that NRP audits conducted on Tax Year 2001 returns succeeded in identifying only a handful of household employers who had failed to file Schedule H. In fact, if one were to rely on the evidence from these audits, one would mistakenly infer that more than 98 percent of all required Nanny Taxes were duly reported in that year.

Clearly, even these rather thorough audits that are specifically designed to measure noncompliance are not up to the task when it comes to Nanny Tax evasion. The IRS needs to develop more effective methods to probe for the presence of domestic workers and to apply these methods more routinely, especially when examining returns that fit the profile for Nanny Tax noncompliance; for instance, returns of dual-earner households that report dependent children but do not claim the Child and Dependent Care Credit. In short, what is needed is a well-designed “compliance campaign” along the lines of the tailored compliance campaigns that the IRS has begun rolling out to address specific large and international business compliance issues (Internal Revenue Service (2017c)). An important objective of this campaign should be to make the perceived risk of detection and punishment more salient among Nanny Tax evaders. Until household employers perceive that Nanny Tax evasion will not be tolerated by the IRS, the current culture of noncompliance will persist.

Assuming the IRS is successful in substantially improving compliance among household employers, this should help to promote greater compliance among their domestic employees as well. Once a W-2 form has been issued and payroll taxes have been reported, domestic employees have a strong incentive to file an income tax return and properly report their earnings. On the other hand, it is not always the employer who drives the compliance decision; household workers sometimes insist on being paid under the table. Therefore, an effective compliance campaign must focus on promoting buy-in among domestic workers as well as household employers.

Sometimes amnesties are introduced prior to the execution of a new compliance program to provide non-compliant taxpayers with an opportunity to “get right” with the tax administration before they find themselves subject to stiff penalties and fines under the new regime. The IRS should consider offering an amnesty prior to the launch of a Nanny Tax compliance campaign as a potential way to encourage Nanny Tax evaders to come forward voluntarily and to ease the transition process.

Normally, employers are required to withhold income taxes from employee earnings. This measure was introduced during World War II to promote the efficient collection of revenue following the massive expansion of income taxation to fund the war effort (Higgs (2007)). Since that time, it has proven to be a very effective way to ensure tax compliance. The IRS estimates that 99 percent of all wages are properly reported by filers of individual income tax returns (Internal Revenue Service (2016)). Under the current Nanny Tax regulations, however, household employers are not required to withhold income taxes from their employees’ pay. When taxes on one’s earnings are not withheld, compliance-minded taxpayers face the prospect of having to make regular estimated tax payments on their own or else risk experiencing hefty tax obligations (and, potentially late-payment penalties) that they may not be equipped to pay when they file their tax returns in the following year. Lawmakers should consider making the withholding of income taxes mandatory for household employers, just as it is for other employers. Although this would increase the compliance burden for household employers to some degree, it would reduce the compliance burden for their employees and promote compliance with their income tax obligations.

11. Conclusion

The vast majority of household employers are not minding the Nanny Tax. As a result, significant tax revenue is going uncollected, and many domestic workers are left without an adequate safety net when they become unemployed, sick, elderly, or disabled. To transform the existing culture of Nanny Tax noncompliance, it is necessary to implement a comprehensive strategy that addresses the root causes of the problem, which include informational barriers, inadequate enforcement, and high Federal-State compliance burdens. This study has proposed measures to address each of these issues.

References

- Blanco, O. (2017, April 19). Why undocumented immigrants pay taxes. *CNN Money*. Retrieved from <http://money.cnn.com/2017/04/19/news/economy/undocumented-immigrant-taxes/index.html>.
- Bloomquist, K.M., and Z. An. (2006). Geographic variation in Schedule H filing rates: Why should location influence the decision to report “Nanny Taxes”? In *Proceedings of the National Tax Association 98th Annual Conference*. Washington, DC, Nov. 17–19, 2005. Retrieved from <https://www.irs.gov/pub/irs-soi/05bloom.pdf>.
- Breedlove, S. (2013). How to avoid the top 4 household employment tax mistakes. *CPA Practice Advisor* 23(10), 18–19. Retrieved from <https://cpapracticeadvisor.epubxp.com/i/183150-oct-2013/0?m4>.
- Committee on Ways and Means, House of Representatives, Proposals to simplify and streamline the payment of employment taxes for domestic workers. Hearing before the Subcommittee on Social Security and the Subcommittee on Human Resources, 103d Congress, 1st session. (Serial No. 103–24). (1993). Retrieved from <https://catalog.hathitrust.org/Record/008523977>.
- DeSilver, D. (2017, March 16). *Immigrants don't make up a majority of workers in any U.S. industry*. Retrieved from <http://www.pewresearch.org/fact-tank/2017/03/16/immigrants-dont-make-up-a-majority-of-workers-in-any-u-s-industry/>.
- Erard, B. (2018, September 24). Who's minding the nanny tax? *Tax Notes* 160(13), 1833–1843.
- Fazel-Zarandi, M. M., J. S. Feinstein, and E. H. Kaplan. (2018, September 21). The number of undocumented immigrants in the United States: Estimates based on demographic modeling with data from 1990 to 2016. *PLoS One*. Retrieved from <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0201193>.
- Haskins, C.B. (2010). *Household employer payroll tax evasion: An exploration based on IRS data and on interviews with employers and domestic workers* (Unpublished doctoral dissertation). University of Massachusetts, Amherst, MA. Retrieved from http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1171&context=open_access_dissertations.
- Higgs, R. (2007, November). Wartime origins of modern income-tax withholding. *The Freeman: Ideas on Liberty*. Retrieved from <https://fee.org/articles/wartime-origins-of-modern-income-tax-withholding/>.
- H.R. Rep. No. 103–491, at 2 (1994, May 4). Retrieved from <https://www.ssa.gov/history/reports/trust/1995/triia.html>
- Internal Revenue Service. (2018a). *Topic number 756—Employment taxes for household employees*. Washington, DC: Internal Revenue Service. Retrieved from <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>.
- Internal Revenue Service. (2018b). *Household employer's tax guide for use in 2018* (Publication 926). Washington, DC: Internal Revenue Service. Retrieved from <https://www.irs.gov/pub/irs-pdf/p926.pdf>.
- Internal Revenue Service. (2017a). *Employer's supplemental tax guide (supplement to Employer's tax guide) for use in 2017* (Publication 15-A). Washington, DC: Internal Revenue Service. Retrieved from <https://www.irs.gov/pub/irs-pdf/p15a.pdf>.
- Internal Revenue Service. (2017b). *Independent contractor (self-employed) or employee?* Washington, DC: Internal Revenue Service. Retrieved from <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>.
- Internal Revenue Service. (2017c, October 5). *IRS announces initial rollout of campaigns*. Washington, DC: Internal Revenue Service. Retrieved from <https://www.irs.gov/businesses/large-business-and-international-launches-compliance-campaigns>.
- Internal Revenue Service. (2016, April). *Tax gap estimates for Tax Years 2008–2010*. Washington, DC: Internal Revenue Service. Retrieved from <https://www.irs.gov/pub/newsroom/tax%20gap%20estimates%20for%202008%20through%202010.pdf>.

- Internal Revenue Service. (1997–2017). *Individual income tax returns* (Publication 1304). Washington, DC: Internal Revenue Service.
- King, M., S. Ruggles, J.T. Alexander, S. Flood, K. Genadek, M.B. Schroeder, B. Trampe, and R. Vick. (2010). *Integrated public use microdata series, Current Population Survey: Version 3.0*. Minneapolis, MN: Minnesota Population Center.
- National Bureau of Economic Research. (n.d.). *Current Population Survey at the NBER*. Retrieved from <http://www.nber.org/cps/>.
- New York Times News Service. (1998, April 5). IRS finds more people are skipping nanny tax. *Chicago Tribune*. Retrieved from http://articles.chicagotribune.com/1998-04-05/news/9804050426_1_rutgers-university-tax-expert-federal-unemployment-taxes-evasion.
- Passel, J., and D. Cohn. (2016, September 20). *Overall Number of U.S. Unauthorized Immigrants Holds Steady Since 2009*. Pew Research Center. Retrieved from <https://www.pewhispanic.org/2016/09/20/overall-number-of-u-s-unauthorized-immigrants-holds-steady-since-2009/>.
- U.S. Census. (2015, April). *Current Population Survey interviewing manual*. Washington, DC: U.S. Census Bureau. Retrieved from https://www2.census.gov/programs-surveys/cps/methodology/intman/CPS_Manual_April2015.pdf.