



CERTIFIED PUBLIC ACCOUNTANTS

Tax News Flash

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- **Employer-Provided Cell Phones: More Benefit, Less Static**

Employer-Provided Cell Phones: More Benefit, Less Static

On September 19, the IRS released [Notice 2011-72](#), relating to the tax treatment by employers and employees of employer-provided cell phones and similar telecommunications equipment.

U.S. tax laws currently allow employers to provide certain perks to employees without including the value of those perks in the employees' gross income. Section 132, for example, excludes from an employee's gross income a "working condition fringe," defined as property or services provided to the employee where, if the employee paid for it, the payment would be deductible as a business expense. It also excludes a "*de minimis* fringe," which is any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

Before 2010, cell phones were "listed property" defined in section 280F, which meant that the employee and the employer had to maintain detailed records substantiating the business use of the property before any amounts were allowable as a business expense. If these records weren't maintained, the employee would not be able to exclude the value of a cell phone as a working condition fringe benefit. Thus, there was a need to review each cell phone bill to demonstrate business as opposed to personal use. The Small Business Jobs Act of 2010, however, removed cell phones from this unfavorable category as of January 1, 2010.

Effective as of January 1, 2010, then, Notice 2011-72 provides that if an employer provides an employee with a cell phone primarily for noncompensatory business reasons, the IRS will treat the employee's use of the cell phone for reasons related to the employer's trade or business as a working condition fringe. In addition, the IRS will treat the value of any personal use of a cell phone provided by the employer primarily for noncompensatory business purposes as excludable from the employee's income as a *de minimis* fringe.

The Notice says that an employer will be considered to have provided an employee with a cell phone primarily for noncompensatory business purposes if there are substantial reasons relating to the employer's business, other than providing compensation to the employee, for providing the employee with a cell phone. The employer's need to contact the employee at all times for work-related emergencies, the employer's requirement that the employee be available to speak with clients at times when the employee is away from the office, and the employee's need to speak with clients located in other time zones at times outside of the employee's normal work day are possible substantial noncompensatory business reasons. However, if the cell

phone is provided to promote the morale or good will of an employee, to attract a prospective employee, or as a means of furnishing additional compensation to an employee, such reasons don't qualify; the value of the phone will then probably be added to the employee's wages.

At the same time, the IRS issued a Field Agent Examination Memorandum that addresses tax treatment of employer reimbursement of the cost of business use of an employee's personal cell phone. The Field Memorandum says that if an employer has a substantial noncompensatory business reason for requiring the employee's use of a personal cell phone and reimburses the employee for the cost of such use on or after January 1, 2010, IRS Agents shouldn't necessarily assert that the reimbursement is additional wages. Examples of such reasons are similar to those provided in Notice 2011-72. Here, (1) the employee must maintain the type of cell phone coverage that is reasonably related to the needs of the employer's business, (2) the reimbursement must be reasonably calculated so as not to exceed expenses the employee actually incurred in maintaining the cell phone, and (3) the reimbursement for business use of the employee's personal cell phone must not be a substitute for a portion of the employee's regular wages.

The Memorandum gave two examples. It stated that reimbursement of the full cost of a monthly flat-rate domestic coverage plan by the employer is an example of a tax-free reimbursement program. However, where the employee is reimbursed for a service plan that covers calls outside the United States but the employer has only domestic operations, the requirements for exclusion might not be met.

If you have questions about any of these news items,
your client service team at Acuity can bring you the resources that you may need.
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