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IRS Pulls the Plug on Efforts to Tax Employer-Provided Cell Phones

On September 14, 2011, the Internal Revenue Service (IRS) issued guidance indicating that employers can provide cell phones and similar telecommunications equipment to employees on a nontaxable basis, as long as the devices are provided primarily for noncompensatory business reasons. In recent years, the tax treatment of such devices was uncertain, and before 2009, the IRS had generally viewed the personal portion of employer-provided cell phone usage as taxable.

In [Notice 2011-72](#), the IRS set out its position with respect to an employer that provides a cell phone or similar telecommunications equipment (collectively referred to in the Notice, and in this summary, as “cell phones”) to an employee primarily for noncompensatory business reasons. The IRS stated that the use of the cell phone is nontaxable to the employee as a working condition fringe benefit with respect to the business use and as a de minimis fringe benefit with respect to any personal use. Additionally, the employer is not required to substantiate the business and personal use, which would normally be necessary under the working condition fringe exclusion. It appears that the reference in the Notice to “similar telecommunications equipment” would include an iPhone, BlackBerry, and similar devices. The Notice is effective retroactively to taxable years beginning after December 31, 2009.

The IRS also issued a [Memorandum](#) to its examiners, announcing that a similar analysis applies with respect to employer reimbursements for cell phone expenses where the employer requires, for substantial noncompensatory business reasons, that the employee maintain and use their personal cell phone for business reasons. The reimbursement must be for cell phone coverage that is reasonably related to the needs of the business (e.g., an international plan would not be appropriate for a domestic-only business), and the reimbursement must be reasonably calculated not to exceed the employee’s expenses. The Memorandum refers only to cell phones and does not include a reference to “similar telecommunications equipment” as does the Notice.

Both the Notice and Memorandum address the noncompensatory business reasons that must exist for the cell phone usage or reimbursements to be nontaxable. The Notice and Memorandum provide the following examples of such business reasons:

- 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.

Conversely, the IRS does not consider an employer providing a cell phone to promote the morale or good will of an employee, attract prospective employees, or furnish additional compensation to be noncompensatory business reasons.

While the Notice and Memorandum provide relief for employers, questions remain:

- If services for a device are generally sold in a bundled format (for example, voice and data services for a single fee), and the employer provides a device with the bundled services, would the Notice and Memorandum analysis apply even if only one of the bundled services was necessary for business purposes?

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- If an employer provides an employee with a Wi-Fi-only tablet device, such as an iPad, and substantial business reasons exist for the employee to have such a device, would the Notice apply? Or is the iPad not “similar telecommunications equipment” in that situation?
- Is an employer reimbursement for non-voice e-mail or Internet service covered by the Memorandum, in light of its reference only to cell phones? For example, an employer might reimburse employees for BlackBerry wireless e-mail service only, and the BlackBerry might not be used as a phone at all.
- Under the Memorandum, what evidence, if any, must an employer provide that it “requires” its employees to maintain a cell phone for business use? Is a written policy necessary?



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