**Title:** Employer-Provided Cell Phones Are Not Income to Employees

**Subtitle:**

**Meta Description:** Employer-Provided Cell Phones Are Not Income to Employees

**Date:** 10-3-2011

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The notice provides guidance on the tax treatment of cellular telephones or other similar telecommunications equipment (“cell phones”) that employers provide to their employees primarily for noncompensatory business purposes.

Section 2043 of the Small Business Jobs Act of 2010, Pub.L.No. 111-240, (the Act) removed cell phones from the definition of listed property for taxable years beginning after December 31, 2009. The notice addresses the treatment of employer-provided cell phones as an excludible fringe benefit. A fringe benefit provided by an employer to an employee is presumed to be income to the employee unless it is specifically excluded from gross income by another section of the Code.

The Act removed cell phones from the definition of listed property for taxable years beginning after December 31, 2009. Because the Act removed cell phones from the definition of listed property, the heightened substantiation requirements that would otherwise apply to listed property no longer apply to cell phones for taxable years beginning after December 31, 2009.

Many employers provide their employees with cell phones primarily for noncompensatory business reasons. The value of the business use of an employer-provided cell phone is excludable from an employee's income as a working condition fringe to the extent that, if the employee paid for the use of the cell phone themselves, such payment would be allowable as a deduction under section 162 for the employee.

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. For example, (i) the employer's need to contact the employee at all times for work-related emergencies, (ii) the employer's requirement that the employee be available to speak with clients at times when the employee is away from the office, and (iii) 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. A cell phone 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 is not provided primarily for noncompensatory business purposes.

The notice provides that, when 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 benefit, the value of which is excludable from the employee's income and, the substantiation requirements that the employee would have to otherwise meet in order for a deduction under § 162 to be allowable are deemed to be satisfied.

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 benefit.

This notice applies to any use of an employer-provided cell phone occurring after December 31, 2009.

**Raw Content:** The IRS has ruled that after 2009 when an employer provides an employee with a cell phone primarily for non-compensatory business reasons, IRS will treat the employee's use of cell phone for reasons related to employer's trade or business as working condition fringe benefit, the value of which is excludable from employee's income. Notice 2011-72.
<p style="text-align: left;">The notice provides guidance on the tax treatment of cellular telephones or other similar telecommunications equipment (“cell phones”) that employers provide to their employees primarily for noncompensatory business purposes.</p>
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<p style="text-align: left;">The notice provides that, when 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 benefit, the value of which is excludable from the employee's income and, the substantiation requirements that the employee would have to otherwise meet in order for a deduction under § 162 to be allowable are deemed to be satisfied.</p>
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