

November 25, 2011 – IRS Releases Guidance on Employee Use of Cell Phones

The Internal Revenue Service recently issued guidance designed to clarify the tax treatment of employer-provided cell phones.

The guidance, issued as an IRS Notice, relates to a provision in the Small Business Jobs Act of 2010, enacted last fall, that removed cell phones from the definition of listed property, a category under tax law that normally requires additional recordkeeping by taxpayers.

The guidance on the treatment of employer-provided cell phones as an excludible fringe benefit provides that when an employer provides an employee with a cell phone primarily for noncompensatory business reasons, the business and personal use of the cell phone is generally nontaxable to the employee. The IRS will not require recordkeeping of business use in order to receive this tax-free treatment.

Simultaneously with the Notice, the IRS announced in a memo to its examiners a similar administrative approach that applies with respect to arrangements common to small businesses that provide cash allowances and reimbursements for work-related use of personally-owned cell phones. Under this approach, employers that require employees, primarily for noncompensatory business reasons, to use their personal cell phones for business purposes may treat reimbursements of the employees' expenses for reasonable cell phone coverage as nontaxable. This treatment does not apply to reimbursements of unusual or excessive expenses or to reimbursements made as a substitute for a portion of the employee's regular wages.

Under the guidance issued, where employers provide cell phones to their employees or where employers reimburse employees for business use of their personal cell phones, tax-free treatment is available without burdensome recordkeeping requirements. The guidance does not apply to the provision of cell phones or reimbursement for cell-phone use that is not primarily business related; as such arrangements are generally taxable.