

IRS Issues Cell Phone Guidance: It's Good News for Payroll American Jobs Act Would Cut Social Security Tax Further;

Employee use of business cell phones is not taxable

In Notice 2011-72, released on September 14, the IRS announced 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 business as a nontaxable working condition fringe benefit without any further substantiation. The IRS will also treat the value of any personal use of such a cell phone as a nontaxable de minimis fringe benefit. This new guidance applies to the use of any employer-provided cell phone occurring after December 31, 2009, and includes many of the elements suggested by the APA in comments submitted to the IRS on proposed cell phone guidance issued in 2009.

In a memo to its field examiners, the IRS explained the new guidance and stated that, where employers require employees to maintain and use their personal cell phones for business purposes and reimburse them for the business use of their phones, examiners should use the same approach as that found in Notice 2011-72. The memo cites an example where an employer requires an employee to use his own cell phone to contact clients outside normal office hours, the employee uses the phone for both business and personal calls, and the employee's coverage plan charges a flat rate per month for a certain number of minutes for domestic calls. In this situation, if the employer reimburses the employee for the basic plan expense, there would be no additional income to the employee.