



MOST EMPLOYER-PROVIDED CELL PHONES ARE NONTAXABLE TO EMPLOYEES

Terry M. Connerton, Esq.

The Small Business Jobs Act of 2010 (“SBJA”) removed cell phones (and “similar telecommunications equipment”) from the definition of “listed property” for taxable years after December 31, 2009. Prior to the SBJA, cell phones provided by employers to their employees were subject to strict substantiation requirements. Employees had to keep detailed records regarding their business versus personal use of cell phones. If employers were unable to obtain the information from employees, they would normally include a percentage (usually between 10 to 20 percent) of the cell phone costs as taxable fringe benefits on their employees’ Form W-2s.

In Notice 2011-72, the IRS provided much needed guidance on the tax treatment of employer-provided cell phones. When employers provide cell phones to their employees primarily for noncompensatory business purposes, the value is excludable from the employees’ income as a working condition fringe benefit and a *de minimis* fringe benefit under Code §§ 132(a)(3) and (a)(4). However, the IRS cautioned that the cost of cell phones provided to employees for no business purpose (*e.g.*, to promote the morale or goodwill of an employee) or provided for compensatory purposes (*e.g.*, to attract a prospective employee) will be income to employees.

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