

When Are Employer-Provided Cell Phones a Taxable Fringe Benefit?

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QUESTION: Our company is considering providing employees with cell phones for communications related to company business. We expect that employees sometimes would use those phones for personal calls. Would the employer-provided phones be a taxable fringe benefit? Could we instead reimburse employees on a nontaxable basis for business use of their personal cell phones?

ANSWER: Business use of an employer-provided cell phone may be treated as a nontaxable working condition fringe benefit without substantiation, so long as the phone is provided “primarily for noncompensatory business purposes.” Examples of noncompensatory business purposes include 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 workday. If the primary purpose requirement is met, the value of any personal use of the employer-provided cell phone will be treated as a nontaxable de minimis fringe benefit. An employer-provided cell phone is not provided primarily for noncompensatory business purposes, and results in taxable income, if the phone is provided as a substitute for compensation, to attract new employees, or to promote employee morale.

The IRS has indicated that a similar analysis applies to employer-provided reimbursement of employees’ personal cell phone expenses. Reimbursements should not be considered additional income or wages if (1) the employer has substantial business reasons for requiring employees to use their personal cell phones and reimburses employees for that use; (2) the reimbursements are reasonably related to the needs of the employer’s business and reasonably calculated not to exceed the expenses that the employee actually incurred in maintaining the cell phone; and (3) the reimbursements are not a substitute for a portion of the employee’s regular wages. Therefore, if an employer reimburses an employee for a monthly basic cell phone plan that charges a flat rate per month for a specified number of minutes of domestic calls, and some of those minutes are used for personal calls, the portion of the cost attributable to personal use can be deemed de minimis and not subject to taxation if all three requirements are met.

These rules also apply to “similar telecommunications equipment.” While IRS guidance has not provided a complete definition of that phrase, the IRS has affirmed that it includes tablet devices, such as iPads.

For more information, see EBIA’s Fringe Benefits manual at Sections VII.D (“Special Applications of the De Minimis Fringe Rule”), XXIII.B (“What Is a Working Condition Fringe?”), and XXIII.D (“Cellular Telephones”).

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