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THE TAX LAWYER

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Is Your Employer-Provided Cell Phone Taxable?



If your employer gives you a cell phone and makes you carry it, how could it be income? Good question. Answer, ask the IRS.

First, remember that just about everything is income. A gift isn't income—but it must come from detached and disinterested generosity. The IRS thinks virtually

nothing your employer gives you is motivated by detached and disinterested generosity.

Fortunately, there are rules under which some items are not taxed even though they are clearly not motivated by detached and disinterested generosity. Some fringe benefits are not income to employees even though the employer is deducting their cost. A prime category is working condition fringe benefits, and that brings us to cell phones.

In [Notice 2011-72](#), the IRS explains that cell phones are often provided by employers not to compensate employees but with what the IRS calls non-compensatory purposes. Translated: the employer is doing it for its own business reasons.

The most common example is where the employer needs to contact the employee at all times for work-related emergencies. Another is if the

employer requires the employee to be available to speak with clients when the employee is away from the office. Yet another is where the employee needs to speak to clients in other time zones outside the employee's normal work hours. All those seem like good reasons for an employer to provide a cell phone.

Plainly, the employer is not trying to compensate the employee. The way the IRS looks at it, in all of these cases the employee would be able to deduct the cost of the phone as a business expense if he or she had to pay for it. That, curiously enough, means that when it's the **employer** who pays for it, the value of the phone isn't income to the employee. It's considered a working condition fringe benefit.

Does this "good reason" rationale apply to everything else your employer provides? Not hardly. The IRS's phone notice says its working condition and de minimis fringe benefit analysis in the notice only apply to employer-provided cell phones, not other items.

Phone Home? What if rather than providing a phone, your employer reimburses you for using your **own** phone? The IRS issued a [memo](#) to IRS auditors explaining that if your employer reimburses you for using your own phone, the same kind of analysis should apply. That means if the employer is reimbursing you because it requires you to be reachable, to take business calls, etc., the reimbursement shouldn't be income. But the IRS tells auditors to make sure the employees have the right cell coverage.

For example, if you claim you are reimbursed because your employer requires you to make overseas calls from your cell, you'd better be sure you actually can make those international calls! Similarly, auditors are to watch for odd spikes in reimbursements. But one thing that's not a problem? If your employer reimburses you for your monthly no limit cell service, and you use it both for business and personal calls.

For more, see:

[Guidance Issued on Tax Treatment of Business Cell Phones](#)

[IRS. Employers Finally Connect on Cell Phone Issues](#)

[IRS Memo on Employee Cell Phones](#)

[IRS Targets Employer Provided Cell Phones](#)

[Are Employer Provided Cell Phones Coming Soon to Definition Of Compensation?](#)

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