

EMPLOYER PROVIDED CELL PHONES SUBJECT TO TAX

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Employment Law Reporter, Ervin Cohen & Jessup LLP

The IRS has issued a new information letter which declares that the value of cell phones provided to employees must, under certain circumstances, be included in the employee's wages. Specifically, if an employee is permitted to use the phone for personal use, the individual personal calls, as well as the pro-rata share of monthly service charges, would constitute income for the employee. However, if the phones are used for business purposes only, or if personal use of the phone is minimal, the phone may be excluded from the employee's income as a working condition fringe benefit. The IRS requires that employees keep records of each call and its business purpose to insure that the business use may be excluded from gross income. Given the IRS letter, employers should consult with a tax adviser and consider implementing a policy which requires employees to keep records that distinguish business from personal phone charges.

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