



True Insights

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Employer-Provided Cell Phones: The risk of losing your deduction

Payroll tax nightmare

Employers who provide cell phones or other similar telecommunications equipment to employees must comply with IRS record-keeping requirements or risk losing their tax deduction. The IRS requires taxpayers to support its tax deduction relating to employer-provided cell phones with written records itemizing the amount of the use and expense, each time and place of such usage, and the business purpose of each expense or use.

If an employer does not substantiate the items noted above with written records such as a log or diary, a company may risk the IRS treating the employees' use of company-provided cell phones as taxable to the company/employer. As a result, the employer will lose its tax deduction and will have to include the fair market value of the cell phone usage regardless of the cost of providing the cell phones to its employees.

Therefore, employers need to focus on keeping and maintaining adequate written documentation to substantiate its business deduction related to employer provided cell phones to its employees or risk losing the deduction.

Lack of written records creates compliance risk

Employer-provided cell phones and other similar telecommunication devices to its employees are treated as "listed property" under I.R.C. §274(d)(4). Under this Code section, the IRS prohibits taxpayers from taking a deduction for cell phones provided to its employees unless the employers (or employees) can substantiate by adequate written documentation or sufficient evidence showing:



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- The amount of expense(s) or other item related to a cell phone program
- Each use of the cell phone
- The business purpose of the expense or other item
- The business relationship to the taxpayer of persons using the cell phone(s).

This means that employers must substantiate each expenditure or use of each cell phone call, including:

- Amount—the amount of each separate expenditure and the amount of each business use
- Time—the date of the expenditure or use
- Business Purpose—the business purpose for the expenditure or use

As anticipated, these burdensome record keeping requirements provide significant compliance headaches for employers. However, the alternative is potentially losing a significant tax deduction and deal with increased IRS audit scrutiny requiring detailed taxpayer's records in order to substantiate the deduction.

Increased IRS scrutiny

As part of its audit of corporations, the IRS is including the following standard Information Document Request ("IDR") regarding employer-provided cellular telephone programs:

"Does the taxpayer provide employees with or reimburse employees for the use of cell phones? If yes, how many?"

Upon the acknowledgement of the taxpayer that cell phones were provided to employees, the IRS issued the following information request:

"As listed property, a cellular telephone is subject to the substantiation requirements of Internal Revenue Code Section 274(d). Consequently, separate records for a cellular phone must be kept so that the business use is excludable as a working condition fringe benefit and the personal use is valued for inclusion as wages (or disallow the deduction at the corporate level). Did the company value the personal vs. business use of cellular telephones and how was that accounted for both for book and tax purposes?"

Response to these IRS inquiries is mandatory and corporations must be prepared to answer these information requests with written documentation in order to preserve its tax deduction or risk losing the deduction in its entirety.

How to substantiate your deduction

Due to the burdensome record keeping requirements to substantiate the business usage of employer-provided cell phones, the IRS and Treasury Department have suggested approaches in Notice 2009-46.

The following are suggested methods in order to substantiate employees' use of employer-provided cellular telephones or other similar telecommunications devices:

Minimal Personal Use Method

The entire amount of an employee's usage of an employer-provided cell phone may be deemed for business purposes under a "minimal personal use" method.

Safe Harbor Substantiation Method

Employers may treat a certain percentage of each employee's use of an employer-provided cell phone as business usage under a safe harbor method.

Statistical Sampling Method

Employers could use statistical sampling techniques to measure an employee's personal use of an employer-provided cell phone. The remaining portion of the employee's usage would be deemed to be for business purposes.

The common requirement to each method described above is that companies will need to maintain written documentation supporting the business use, purpose, and amounts related to employer-provided cellular phone programs.



The IRS and Treasury Department are working to eliminate much of the burden experienced by taxpayers who provide cell phones to their employees with the release of Notice 2009-46

Ask yourself?

- Do you, the employer, provide cell phones to your employees?
- If so, do you cover the costs of ALL usage amounts for these cell phones?
- If so, do you take a deduction for the usage amounts of those employer-provided cell phones?
- Are you currently maintaining written documentation to support the business purpose, usage, and amount for each call to substantiate your deduction?

Solutions

True Partners Consulting can assist your company in implementing and developing a solution to preserve and protect your company's tax deduction by:

- Developing a program to bifurcate business versus personal use of employer-provided cell phones.
- Implementing a policy and program to track IRS requirements to sustain your deduction.
- Developing and assist in maintaining a written policy prohibiting personal use of employer-provided cell phones
- Developing an employee-based policy to track personal use of the employer-provided cell phone during work hours and outside of work

For more information and solutions on protecting your company's tax deductions related to employer-provided cellular telephone programs, please contact [Joanne Chun Hughes at joanne.hughes@TPCtax.com](mailto:joanne.hughes@TPCtax.com).

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