

**BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA**

RESOLUTION ADOPTING CELL PHONE COMPENSATION AND USE POLICY

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, it is necessary for Sarpy County to establish guidelines for all phone usage and compensation that is uniform, efficient to manage, and complies with state and federal regulations; and,

WHEREAS, input has been received from Elected Officials and Department Heads regarding the proposed Cell Phone Compensation and Use Policy.

NOW, THEREFORE, BE IT RESOLVED, By the Sarpy County Board of Commissioners that the attached Cell Phone Compensation and Use Policy be adopted with an effective date of November 1, 2013.

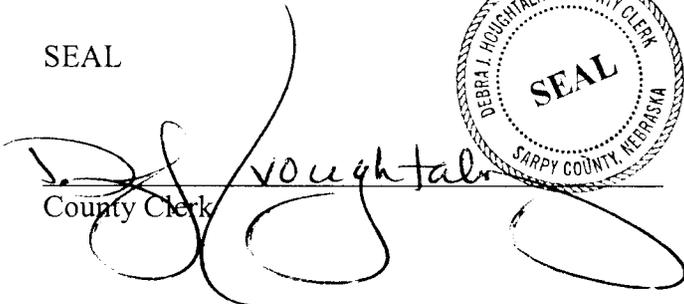
The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 20th day of August, 2013.


Sarpy County Board Chairman

Attest:

SEAL




County Clerk

Sarpy County, Nebraska
Cell Phone Compensation and Use Policy
08-20-13

1. **Purpose:** The purpose of this Cell Phone Compensation and Use (Policy) is to establish guidelines for cell phone use and compensation that is uniform, efficient to manage, and complies with state and federal regulations.
2. **Compliance:** The use of cell phones by the public officials and public employees of Sarpy County is governed by State Statutes §49-14,101.01 to §49-14,101.03, IRS Notice 2011-72, this Policy and Rule 4 Regulation 7 of the Sarpy County Personnel Rules and Regulations. (See Exhibits C-1 to C-3)
3. **Application:** This Policy applies to Elected Officials, Department Heads, Appointed Officials and staff who are authorized to use a cell phone and/or associated wireless services for County Business and who receive compensation from the County to offset the cost of the cell phone for Business-related calls or who receive a County-provided cell phone. This policy does not apply to employees of the Sheriff's office. The Sheriff's office should establish formal procedures that will apply to all Sheriff's employees. Such procedures must comply with the regulations stated in Section 2 above.
4. **Transition:** Sarpy County currently allows many different options for cell phone usage:
 - 4.1 Current options
 - 4.1.1 County purchases the phone and pays for all monthly charges.
 - 4.1.2 County purchases phone and employee pays for all monthly charges.
 - 4.1.3 County purchases the phone and pays for monthly charges, but employee makes reimbursement for personal use.
 - 4.1.4 Employee owns the cell phone and pays for all monthly charges but claims reimbursement for County Business use.
 - 4.2 Intention regarding County-purchased cell phones
 - 4.2.1 It is the intention of Sarpy County to limit the provision of County-purchased cell phones and County-funded phone plans and move to providing compensation for personally owned cell phones for the following reasons:
 - 4.2.1.1 To provide uniformity in expenditures for cell phone costs.
 - 4.2.1.2 To streamline documentation procedures.
 - 4.2.1.3 To streamline accounting procedures.
 - 4.2.1.4 To reduce the chance for inadvertent illegal private use of a public resource.
 - 4.2.1.5 To allow for the legal combination of personal and County Business use.

- 4.3 Existing County-purchased cell phones
 - 4.3.1 County employees in possession of County-purchased cell phones will be allowed to purchase the cell phone as set forth in Section 4.3.2 and may have the service provider transfer the service into their name. Employees that do not wish to purchase their County-purchased cell phone should turn the cell phone in to the Purchasing Department within 60 days of the adoption of this Policy.
 - 4.3.2 County employees may purchase their County-purchased cell phone as follows:
 - 4.3.2.1 Basic cell phone \$5.00
 - 4.3.2.2 Smart phone \$20.00 – one (1) year or older
 - 4.3.2.3 Smart phone \$40.00 – less than one (1) year old
 All cell phones purchased are done so on an “as is” basis, there are absolutely no guarantees (nor can any be made), expressed or implied regarding the condition or operation of the cell phone and no refunds. All sales are final.
 - 4.3.3 The Purchasing Department will periodically offer surplus cell phones for sale to the public. County employees are eligible to bid on surplus cell phones.
 - 4.3.4 The Purchasing Department will request Information Systems staff to “wipe clean” all surplus phones before disposal.

5. **Definitions:**

- 5.1 Cell phone will include the following:
 - 5.1.1 Cell phone
 - 5.1.2 Mobile phone
 - 5.1.3 Smart phone
- 5.2 County employees will include the following:
 - 5.2.1 Elected Officials
 - 5.2.2 Appointed Officials
 - 5.2.3 Department Heads
 - 5.2.4 Staff of above
- 5.3 County Cell Phone Committee will be comprised of the following:
 - 5.3.1 One Elected Official selected by the other Elected Officials
 - 5.3.2 One County Board member selected by the County Board Chairman
 - 5.3.3 The County Administrator
 - 5.3.4 The Information Systems Director
- 5.4 County Business:
 - 5.4.1 Means cell phone use required to accomplish duties in the employees job description and not for the personal convenience of the employee.

6. **Policy:** County employees whose job requires them to use a cell phone for County business, as outlined in this Policy, may use a personal cell phone service for County Business use and will be eligible to receive a monthly reimbursement for that service.

- 6.1. Cell Phone Reimbursement for Personal Phone Used for County Business
 - 6.1.1 Eligibility for Cell Phone Reimbursement

- 6.1.1.1 The cell phone reimbursement agreement (Exhibit B) must be approved by the County Elected Official/Department Head and the County Cell Phone Committee
- 6.1.1.2 The Cell Phone Committee will base its decision for approval or denial of the Cell Phone Agreement on a bona fide need for business use rather than personal convenience. Examples are set forth in Exhibit C-2.
- 6.1.1.3 The County may provide a cell phone reimbursement to a County employee if at least one of the following criteria is met:
 - 1. The job requires considerable time outside the office or away from workstation (job, need, travel, meetings, etc.) and use of the cell phone facilitates the effective conduct of business operations while away.
 - 2. The job requires the County employee to be immediately accessible to receive and/or make frequent business calls outside of working hours.
 - 3. Job duties away from the office may expose the County employee or other to immediate harm or danger. (e.g. Pre-Trial Release).
- 6.1.1.4 The reimbursement will be charged to the corresponding department's telephone budget by the County Elected Official/Department Head, who must ensure availability of funding. Department eligibility criteria can be more (but not less) restrictive than the County criteria stated in this Policy.

6.2 Personal Cell Phone Reimbursement Amount

- 6.2.1 The monthly cell phone reimbursements are shown in Exhibit A of this Policy. The reimbursement is intended to reimburse the County employee for the average County Business use of the cell phone, not to pay the entire phone bill. The amount of the reimbursement should be commensurate with the requirement for County Business use and may be reviewed and confirmed periodically by the County employees' Elected Official/Department Head and the County Cell Phone Committee.
- 6.2.2 Eligibility for the reimbursement and the level of the reimbursement provided is subject to change or cancellation as determined by the County Elected Official/Department Head and confirmed by the County Cell Phone Committee.
- 6.2.3 The monthly reimbursements are not considered part of base pay used for calculating percentage salary increases.
- 6.2.4 The monthly reimbursement as shown in Exhibit A includes partial compensation for cell phone insurance that may be required by the Elected Official/Department Head to ensure that a broken or lost cell phone is repaired or replaced in a timely manner.
- 6.2.5 Elected Official/Department Heads or the County Cell Phone Committee may periodically request documentation of business use to determine the appropriateness of eligibility and level of the reimbursement amount.

Personal information may be redacted prior to submission. If requested information is not provided, the reimbursement may be discontinued.

- 6.2.6 Payment: Any cell phone reimbursement will be paid through the County claims system as non-taxable income upon receipt by the County Clerk's Office of an authorized Cell Phone Reimbursement Agreement. Such forms shall be completed for any new, change or cancellation of services or eligibility for any reimbursement. A reimbursement may not be paid if a County employee remains on paid leave status or in an unpaid leave status for more than three payroll periods at the discretion of the Elected Official/Department Head. Additionally, no reimbursement will be paid if a County employee cancels cell service.
 - 6.2.7 The reimbursement will be paid starting the first full month of cell phone coverage following receipt of the approved Cell Phone Reimbursement Agreement in the County Clerk's Office. No retroactive requests will be processed.
 - 6.2.8 Claims for Cell Phone Reimbursement will be submitted not more often than monthly. The employee will attach documentation, such as a copy of the current month's bill, to the Cell Phone Reimbursement claim to demonstrate that all phone and/or data service was obtained for the previous month. Personal information may be redacted prior to submission.
 - 6.2.9 No other cell phone reimbursement is allowed except as provided in this policy.
- 6.3 Personal Cell Phone - Employee Responsibilities
- 6.3.1 Sign the Cell Phone Reimbursement Agreement form (Exhibit B) thereby certifying that he/she will provide the phone number within five (5) days of activation and will be available for calls (in possession of the phone and have it turned on) during those time specified by Elected Official/Department Head.
 - 6.3.2 Select any cell phone carrier whose service meets the requirements of the job responsibilities. County employees shall be free to purchase and provide their own accessories at their own cost, without reimbursement.
 - 6.3.3 Inform the County to discontinue the reimbursement when the eligibility criteria are no longer met or when the cell service is cancelled. If such notification is not submitted within 30 days of no longer meeting criteria or service cancellation, the County employee must repay any reimbursement received during the time in which the employee was not eligible for the reimbursement.
 - 6.3.4 Pay all charges on his/her personal cell phone plan. If the County employee leaves the position, he/she continues to be responsible for the contractual obligations of his/her cell phone plan.
 - 6.3.5 Comply with applicable laws and County policy (see Exhibits C-1 to C-3) regarding the use of cell phones while driving and avoid cell phone use that may jeopardize the safety of the County employee or others.

- 6.3.6 Acknowledge that cell phone transmissions are not secure and that County employees should use discretion in relaying confidential information over cell phones.
 - 6.3.7 Acknowledge that records relating to County Business are subject to the Public Records Act and records relating to personal use of a cell phone may also be subject to the Public Records Act.
 - 6.3.8 The Elected Official/Department Head will determine time limit for replacing lost or broken phones in order to remain eligible for cell phone reimbursement to ensure that a broken or lost cell phone is repaired or replaced in a timely manner.
 - 6.3.9 Department Head may require eligible employee to obtain cell phone insurance.
 - 6.3.10 The employee may be required to have a cell phone with a local area code if required by the Elected Official/Department Head.
- 6.4 County-Purchased Cell Phones
- 6.4.1 A limited number of personnel may be allowed to use County-purchased cell phones if authorized by the County Cell Phone Committee on Exhibit B.
 - 6.4.2 The cell phone invoice will be coded to the proper department's budget and turned in to the County Clerk's office for payment using the normal procedures.
- 6.5 County Provided Cell Phone - County Employee Responsibility
- 6.5.1 The entire detailed cell phone statement will be included with the phone service invoice. Personal calls on County-provided cell phones are highly discouraged and must follow the guidelines set forth in State Statute §49-101.01(3).
 - 6.5.2 As provided in State Statute §49-101.01(3) the County employee is responsible for reimbursing the County for allowable personal use. That reimbursement shall be made as follows:
 - 6.5.2.1 County employees are required to reimburse Sarpy County for all personal calls, emails, text messages, etc. made from their County cell phone. Upon receipt of the monthly bill, the following steps must be taken before submitting the bill for reimbursement:
 1. Highlight all personal calls and mark as "personal"
 2. Add up the minute usage for personal calls
 3. Calculate percentage of use for personal calls
 4. Multiply percentage of use for personal calls times the monthly rate.
 5. Submit payment for personal use to the County Treasurer's Office.
 6. Attach a copy of the County Treasurer's receipt to the invoice and process the payment for the difference.
 7. Calculate roaming charges separately for personal calls and reimburse.
 8. Cell phone usage on any county-owned/purchased cell phone is subject to review by Sarpy County.

6.6 Cell Phone Support-By Type

- 6.6.1 County employees who are authorized to obtain a regular cell phone must obtain technical support from the vendor providing the phone.
- 6.6.2 County employees who are authorized to use a “Smart phone” device and wish to utilize the Information Systems technical support for email or calendar integration, should check with Information Systems prior to purchase to ensure the service and device will support integration. Support for the cell phone portion of these types of devices must obtain technical support from the vendor providing the phone.

Exhibit A
Cell Phone Reimbursements

Monthly Reimbursement		
Sarpy County, Nebraska		
Tier I	\$30.00/month	County Business use of cell phone up to 200 minutes per month plan
Tier II	\$40.00/month	County Business use of cell phone over 200 minutes per month plan
Tier III	Lesser of \$55.00/month or amount paid by employee	County Business use of cell phone with data service plan

Exhibit B
Sarpy County Cell Phone Reimbursement Agreement

This form is to be used by County employees and their Elected Official/Department Heads to document their request for cell phone reimbursement and acknowledge their understanding of the Sarpy County Cell Phone Policy requirements and limitations.

Please Print

Department Name: _____
Employee Last Name: _____ **Employee First Name:** _____
Start Date: _____ **End Date (if any):** _____

Add Cell Phone Reimbursement or Change Existing Cell Phone Reimbursement:

You must meet at least one of the following criteria to receive the reimbursement:

- The job requires considerable time outside the office or away from workstation (job, need, travel, meetings, etc.) and use of the cell phone facilitates the effective conduct of business operations while away.
- The job requires the County employee to be immediately accessible to receive and/or make frequent business calls outside of working hours.
- Job duties away from the office may expose the County employee or other to immediate harm or danger. (E.g. Pre-Trial Release).

The cell phone reimbursement is intended to reimburse the County employee for the average business use of the cell phone, not to pay the entire phone bill. This reimbursement will be charged to the Telephone budget in the applicable department's budget. The Elected Official/Department Head must ensure availability of funding. Department eligibility criteria can be more (but not less) restrictive than the County criteria stated.

Reimbursement for Use of Personal Phone (complete listed information)

- a) 10 digit phone number: _____ County Employee will be available for calls (in possession of the phone and have it turned on) during those times specified by manager.
- b) Phone number is listed in Reverse 911 Yes No
- c) Reimbursement amount per month (from the table below) \$ _____

Cell Phone Reimbursement

Monthly Reimbursement	
Tier I	
Tier II	
Tier III	
Other	

County Purchased Cell Phone

(Only available for limited staff). Give justification for request.

Cell Phone Support

County employees who are authorized to use a “Smart phone” device and wish to utilize the Information Systems technical support for email or calendar integration, must choose an authorized provider and phone. Technical Support for all other Smart phones, and regular phones must obtain technical support from the vendor providing the phone.

Employee Information and Responsibilities

Eligibility for the reimbursement or the level of the reimbursement provided is subject to change or cancellation without notice at any time. Elected Official/Department Heads or or the County Cell Phone Committee may periodically request documentation of business use to determine the appropriateness of eligibility and level of the reimbursement amount. Records relating to County Business are subject to the Public Records Act and records relating to personal use of a cell phone may also be subject to the Public Records Act.

Cell Phone Reimbursement Cancellation

County employee must inform their department to discontinue the reimbursement when the eligibility criteria are no longer met or when the cell service is cancelled. The *Cell Phone Reimbursement Agreement* form must be completed, checking the box marked **Cancel Cell Phone Reimbursement** located below. If such notification is not submitted within 30 days of no longer meeting criteria or service cancellation, the employee must repay any reimbursement received during the time in which the employee was not eligible for the reimbursement.

The *Cell Phone Reimbursement Agreement* form must be completed, checking the box marked **Cancel Cell Phone Reimbursement** located below if the employee is leaving the County or being transferred to a different department.

Remove Cell Phone Reimbursement Cancel cell phone reimbursement

Documentation Requirements

- The completed and signed *Cell Phone Reimbursement Agreement* is the only document required. It must include the appropriate position designated for cell phone reimbursement and a start date. The monthly reimbursement be paid upon submission of documentation as required in Section 6.2.8.
- Include your department name and enter that at the top of this document.
- If your business need is short term, e.g., 3 months out of the year, you must put a start and stop date on this document.
- Retain a copy of all records in department.

This Cell Phone Reimbursement Agreement must be approved by the County Elected Official/Department Head and the County Cell Phone Committee. I understand that my cell phone number may be published. I understand that I may be required to submit a copy of the cell phone billing statement for audit purposes. I have read and signed the

Sarpy County Phone Usage Agreement. I also understand that I am financially responsible for any all charges for this cell phone plan.

County Employee Name (please print)
Last _____ First _____
Employee Signature _____ Date _____ <i>If I am subject to repayment I agree to have that amount deducted from my paycheck</i>
Elected Official/Department Head Name (please print)
Last _____ First _____
Elected Official/Department Head Signature _____ Date _____
County Cell Phone Committee Name (please print)
Last _____ First _____
_____ Signature _____ Date _____

Exhibit C-4

49-14,101.01. Financial gain; gift of travel or lodging; prohibited acts; violation; penalty; permissible activities and uses.

(1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

(2) A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

(3) Unless otherwise restricted by an employment contract, a collective-bargaining agreement, or a written agreement or policy approved by a government body, a public official or public employee may use a telecommunication system, a cellular telephone, an electronic handheld device, or a computer under the control of a government body for email, text messaging, a local call, or a long-distance call to a child at home, a teacher, a doctor, a day care center, a baby-sitter, a family member, or any other person to inform any such person of an unexpected schedule change or for other essential personal business. Any such communication shall be kept to a minimum and shall not interfere with the conduct of public business. A public official or public employee shall be responsible for payment or reimbursement of charges, if any, that directly result from any such communication. An agency or government body may establish procedures for reimbursement of charges pursuant to this subsection.

(4) A public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(5) A member of the immediate family of a public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(6) This section does not prohibit the Executive Board of the Legislative Council from adopting policies that allow a member of the Legislature to install and use with private funds a telephone line, telephone, and telefax machine in his or her public office for private purposes.

(7) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

Source: Laws 2001, LB 242, § 19; Laws 2002, LB 1086, § 4; Laws 2005, LB 242, § 44; Laws 2009, LB626, § 4.

49-14,101.02. Public official or public employee; use of public resources or funds; prohibited acts; exceptions.

(1) For purposes of this section, public resources means personnel, property, resources, or funds under the official care and control of a public official or public employee.

(2) Except as otherwise provided in this section, a public official or public employee shall not use or authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

(3) This section does not prohibit a public official or public employee from making government facilities available to a person for campaign purposes if the identity of the candidate or the support for or opposition to the ballot question is not a factor in making the government facility available or a factor in determining the cost or conditions of use.

(4) This section does not prohibit a governing body from discussing and voting upon a resolution supporting or opposing a ballot question or a public corporation organized under Chapter 70 from otherwise supporting or opposing a ballot question concerning the sale or purchase of its assets.

(5) This section does not prohibit a public official or a public employee under the direct supervision of a public official from responding to specific inquiries by the press or the public as to his or her opinion regarding a ballot question or from providing information in response to a request for information.

(6) This section does not prohibit a member of the Legislature from making use of public resources in expressing his or her opinion regarding a candidate or a ballot question or from communicating that opinion. A member is not authorized by this section to utilize mass mailings or other mass communications at public expense for the purpose of campaigning for or against the nomination or election of a candidate. A member is not authorized by this section to utilize mass mailings at public expense for the purpose of qualifying, supporting, or opposing a ballot question.

(7) This subsection applies to public officials other than members of the Legislature provided for in subsection (6) of this section. This section does not prohibit, in the normal course of his or her duties, a public official or a public employee under the direct supervision of a public official from using public resources to research and prepare materials to assist the government body for which the individual is a public official or public employee in determining the effect of the ballot question on the government body. This section does not authorize mass mailings, mass duplication, or other mass communications at public expense for the purpose of qualifying, supporting, or opposing a ballot question. Mass communications shall not include placing public records demonstrating the consequences of the passage or defeat of a ballot question affecting the government body for which the individual is a public official or public employee on existing web sites of such government body.

(8) Nothing in this section prohibits a public official from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used.

(9) Nothing in this section prohibits a public employee from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used. Except as otherwise provided in this section, a public employee shall not engage in campaign activity for or against the qualification, passage, or defeat of a ballot question or the

nomination or election of a candidate while on government work time or when otherwise engaged in his or her official duties.

(10) This section does not prohibit an employee of the Legislature from using public resources consistent with this section for the purpose of researching or campaigning for or against the qualification, passage, or defeat of a ballot question if the employee is under the direction and supervision of a member of the Legislature.

(11) Nothing in this section prohibits a public official or public employee from identifying himself or herself by his or her official title.

Source: Laws 2001, LB 242, § 20; Laws 2005, LB 242, § 45; Laws 2009, LB626, § 5.

Annotations

The filming of a city council member in his city office for the purpose of creating a video advertisement for his reelection campaign was not a "use" of resources in violation of this section. *Vokal v. Nebraska Acct. & Disclosure Comm.*, 276 Neb. 988, 759 N.W.2d 75 (2009).

This section is penal in nature and must be strictly construed in the context of the object sought to be accomplished, the evils and mischiefs sought to be remedied, and the purpose sought to be served. *Vokal v. Nebraska Acct. & Disclosure Comm.*, 276 Neb. 988, 759 N.W.2d 75 (2009).

49-14,101.03. Public official or public employee; incidental or de minimis use of public resources; permissible activities and uses.

(1) Any use of public resources by a public official or public employee which is incidental or de minimis shall not constitute a violation of section 49-14,101.01 or 49-14,101.02.

(2) For purposes of sections 49-14,101.01 and 49-14,101.02, a resource of government, including a vehicle, shall not be considered a public resource and personal use shall not be prohibited if (a) the use of the resource for personal purposes is part of the public official's or public employee's compensation provided in an employment contract or a written policy approved by a government body and (b) the personal use of the resource as compensation is reported in accordance with the Internal Revenue Code of 1986, as amended, and taxes, if any, are paid. If authorized by the contract or policy, the resource may be used whether or not the public official or public employee is engaged in the duties of his or her public office or public employment.

(3) Use of a government vehicle by a public official or public employee to travel to a designated location or the home of the public official or public employee is permissible when the primary purpose of the travel serves a government purpose and the use is pursuant to a written policy approved by a government body.

(4) Pursuant to a collective-bargaining agreement, a public facility may be used by a bargaining unit to meet regarding activities of the union or bargaining unit. This section shall not authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

(5) Nothing in the Nebraska Political Accountability and Disclosure Act prohibits a public official or public employee from using his or her personal cellular telephone, electronic handheld device, or computer to access a wireless network to which access is provided to the public by a government body.

Source: Laws 2009, LB626, § 3.

Exhibit C-2

Part III - Administrative, Procedural, and Miscellaneous

Tax Treatment of Employer-Provided Cell Phones

Notice 2011-72

PURPOSE

This notice provides guidance on the tax treatment of cellular telephones or other similar telecommunications equipment (hereinafter collectively "cell phones") that employers provide to their employees primarily for noncompensatory business purposes.

BACKGROUND

Section 2043 of the Small Business Jobs Act of 2010, Pub.L.No. 111-240, (the Act) removed cell phones from the definition of listed property for taxable years beginning after December 31, 2009. The Act did not otherwise alter the requirement that an employer-provided cell phone is a fringe benefit, the value of which must be included in the employee's gross income, unless an exclusion applies, or the potential treatment of an employer-provided cell phone as an excludible fringe benefit. Since enactment of the Act, the IRS has received questions about the proper tax treatment of employer-provided cell phones. Accordingly, this notice addresses the treatment of employer-provided cell phones as an excludible fringe benefit.

Gross Income

Section 61 of the Internal Revenue Code (Code) defines gross income as all income, from whatever source derived. Section 61(a)(1) provides that gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. A fringe benefit provided by an employer to an employee is presumed to be income to the employee unless it is specifically excluded from gross income by another section of the Code. See Income Tax Regulations § 1.61-21(a).

Working Condition Fringe Benefits

Section 132(a)(3) of the Code provides that gross income does not include any fringe benefit which qualifies as a working condition fringe. Section 132(d) provides that “working condition fringe” means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under §§ 162 or 167.

Section 1.132-5(a)(1)(ii) of the Income Tax Regulations (Regulations) provides that if, under section 274 or any other section, certain substantiation requirements must be met in order for a deduction under §§ 162 or 167 to be allowable, then those substantiation requirements apply when determining whether a property or service is excludable as a working condition fringe. See also Regulations § 1.132-5(c)(1).

Section 162(a) of the Code provides that a deduction is allowed for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. However, section 262(a) of the Code provides that, except as otherwise expressly provided, no deduction shall be allowed for personal, living, or family expenses.

In the case of certain listed property, as defined in section 280F(d)(4) of the Code, special heightened substantiation rules apply. Section 274(d)(4) of the Code provides that no deduction shall be allowed with respect to any listed property (as defined in § 280F(d)(4)), unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the use of the property, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons using the property.

The Act removed cell phones from the definition of listed property for taxable years beginning after December 31, 2009. Because the Act removed cell phones from the definition of listed property, the heightened substantiation requirements that apply to listed property no longer apply to cell phones for taxable years beginning after December 31, 2009.

De Minimis Fringe Benefits

Section 132(a)(4) of the Code provides that gross income does not include any fringe benefit which qualifies as a de minimis fringe. Section 132(e) defines a de minimis fringe as any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable. Except as specifically provided (i.e., occasional meal money or local transportation fare and reimbursements for public transit passes), a cash fringe benefit is not excludable as a de minimis fringe. See Regulations §1.132-6(c).

Guidance Regarding Employer-Provided Cell Phones

Many employers provide their employees with cell phones primarily for noncompensatory business reasons. The value of the business use of an employer-provided cell phone is excludable from an employee's income as a working condition fringe to the extent that, if the employee paid for the use of the cell phone themselves, such payment would be allowable as a deduction under section 162 for the employee.

An employer will be considered to have provided an employee with a cell phone primarily for noncompensatory business purposes if there are substantial reasons relating to the employer's business, other than providing compensation to the employee, for providing the employee with a cell phone. For example, 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 work day are possible substantial noncompensatory business reasons. A cell phone provided to promote the morale or good will of an employee, to attract a prospective employee or as a means of furnishing additional compensation to an employee is not provided primarily for noncompensatory business purposes.

This notice provides that, when an employer provides an employee with a cell phone primarily for noncompensatory business reasons, the IRS will treat the employee's use of the cell phone for reasons related to the employer's trade or business as a working condition fringe benefit, the value of which is excludable from the

employee's income and, solely for purposes of determining whether the working condition fringe benefit provision in section 132(d) applies, the substantiation requirements that the employee would have to meet in order for a deduction under §162 to be allowable are deemed to be satisfied. In addition, the IRS will treat the value of any personal use of a cell phone provided by the employer primarily for noncompensatory business purposes as excludable from the employee's income as a de minimis fringe benefit. The rules of this notice apply to any use of an employer-provided cell phone occurring after December 31, 2009. The application of the working condition and de minimis fringe benefit exclusions under this notice apply solely to employer-provided cell phones and should not be interpreted as applying to other fringe benefits.

EFFECTIVE DATE

This notice is effective for all taxable years after December 31, 2009.

CONTACT INFORMATION

The principal author of this notice is Joseph Perera of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice contact Joseph Perera on (202) 622-6040 (not a toll-free call).



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

September 14, 2011

Control Number: SBSE-04-0911-083
Expiration Date: September 19, 2012
Impacted IRM(s): 4.23.5

MEMORANDUM FOR ALL FIELD EXAMINATION OPERATIONS

FROM: Shenita Hicks /s/ **Shenita Hicks**
Director, Examination, SB/SE

John Imhoff /s/ **John Imhoff**
Director, Specialty Programs, SB/SE

David Horton /s/ **David Horton**
Director, Field Specialists, LB&I

Clifford J. Gannett /s/ **Clifford J. Gannett**
Acting Director, Government Entities, TE/GE

SUBJECT: Interim Guidance on Reimbursement of Employee Personal Cell
Phone Usage in light of Notice 2011-72

The purpose of this memorandum is to provide audit guidance to examiners regarding employers that reimburse their employees for the business use of an employee's personal cell phone. This document is not intended to be a technical position, but to provide guidance to examiners who encounter this issue.

Notice 2011-72 addresses the tax treatment of employer-provided cell phones for noncompensatory purposes. The Notice provides that, for tax years after December 31, 2009, the IRS will treat the employee's use of employer-provided cell phones for reasons related to the employer's trade or business as a *working condition fringe benefit, the value of which is excludable from the employee's income*. However, the cell phone must be issued primarily for noncompensatory business reasons. For purposes of determining whether the working condition fringe benefit provision in § 132(d) applies, the substantiation requirements that must be satisfied by the employee for an allowable deduction under § 162 are deemed to be satisfied. Additionally, *any personal use of the employer-provided cell phone will be treated as a de minimis fringe benefit, excludable from the employee's gross income under § 132(e) of the Code*.

Notice 2011-72 does not address the treatment of reimbursements received by employees from employers for the business use of an employee's personal cell phone.

In cases where employers, for substantial noncompensatory business reasons, require employees to maintain and use their personal cell phones for business purposes and reimburse the employees for the business use of their personal cell phones, examiners should analyze reimbursements of employees' cell phone expenses in a manner that is similar to the approach described in Notice 2011-72. Specifically, in cases where employers have substantial business reasons, other than providing compensation to the employees, for requiring the employees' use of personal cell phones in connection with the employer's trade or business and reimbursing them for their use, examiners should not necessarily assert that the employer's reimbursement of expenses incurred by employees after December 31, 2009, results in additional income or wages to the employee. However, the employee must maintain the type of cell phone coverage that is reasonably related to the needs of the employer's business, and the reimbursement must be reasonably calculated so as not to exceed expenses the employee actually incurred in maintaining the cell phone. Additionally, the reimbursement for business use of the employee's personal cell phone must not be a substitute for a portion of the employee's regular wages. Arrangements that replace a portion of an employee's previous wages with a reimbursement for business use of the employee's personal cell phone and arrangements that allow for the reimbursement of unusual or excessive expenses should be examined more closely.

- Examples of substantial noncompensatory business reasons for requiring employees to maintain personal cell phones and reimbursing them for their use include: (1) the employer's need to contact the employee at all times for work-related emergencies; and (2) the employer's requirement that the employee be available to speak with clients at times when the employee is away from the office or at times outside the employee's normal work schedule (i.e., clients are in different time zones).
- An example of a reimbursement arrangement that does not result in additional income or wages is as follows: an employer has a substantial noncompensatory business reason for requiring the employee to maintain a personal cell phone to facilitate communication with the employer's clients during hours outside the employee's normal tour of duty in the office and reimbursing the employee for the use of the phone. The employee uses the cell phone for both business purposes and personal purposes and the employee's basic coverage plan charges a flat-rate per month for a certain number of minutes for domestic calls. The employer reimburses the employee for the monthly basic plan expense to enable the employee to maintain contact with business clients throughout the United States after hours.
- Examples of reimbursement arrangements that may be in excess of the expenses reasonably related to the needs of the employer's business and should be examined more closely include: (1) reimbursement for international or satellite cell phone coverage to a service technician whose business clients and other

business contacts are all in the local geographic area where the technician works; or
(2) a pattern of reimbursements that deviates significantly from a normal course of cell phone use in the employer's business (i.e., an employee received reimbursements for cell phone use of \$100/quarter in quarters 1 through 3, but receives a reimbursement of \$500 in quarter 4).

If you have any questions regarding these guidelines, you may contact Laird MacMillan, Senior Program Analyst.

cc: www.irs.gov

Sarpy County Board of Commissioners

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ADMINISTRATOR Mark Wayne
DEPUTY ADMINISTRATOR Scott Bovick
FISCAL ADMIN./PURCHASING AGT. Brian Hanson



COMMISSIONERS

Don Kelly District 1
Jim Thompson District 2
Tom Richards District 3
Brenda Carlisle District 4
Jim Warren District 5

Memo

To: Sarpy County Board

From: Brian Hanson

Re: Cell Phone Policy

The Sarpy County Board discussed a draft cell phone policy at the August 6, 2013 Board meeting. I have attached a copy of the policy that was discussed. Two issues were brought up that could be changed prior to the adoption of the policy.

I. Monthly Reimbursement Rates as shown on Exhibit A are too high.

Option A: Modify the tiers and reduce the rates.

Option B: Keep the tiers as presented but reduce the rates.

Option C: Keep the tiers and rates as presented.

Option D: Other.

II. Too many employees are eligible for County phones or reimbursement.

Option A: Modify the eligibility criteria in Section 6.1.1.3 & Exhibit B for employees to receive reimbursement.

Option B: Modify section 6.4.1 to restrict the number of employees that are eligible to have a County issued phone.

Option C: Add general language to section 6.1.1.3 and Exhibit B directing the Cell Phone Committee to limit the number of employees who are eligible for cell phone reimbursement.

Option D: Keep the eligibility language as originally presented.

Option E: Other.

The adoption of the Cell Phone Compensation and Use Policy will be on the County Board agenda on August 20, 2013 for your consideration. Please let me know if you have any questions or comments.

August 15, 2013

Brian Hanson
Brian Hanson

BH/mg

cc: Mark Wayne
Scott Bovick
Debra J. Houghtaling
Elected Officials
Department Heads