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MEMORANDUM FOR ALL FIELD EXAMINATION OPERATIONS

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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