Cell Phone Policy – Questions & Answers

The questions and answers listed below are based on the new Cell Phone Policy which will go into effect on June 23, 2008.

AGENCY ALLOWANCE FOR EMPLOYEE-OWNED CELL PHONES

1. **Why does the Agency want me to own my cellular telephone?**
   The Internal Revenue Service (IRS) requires that the business and personal use of agency-owned cell phones must be documented in a very detailed manner. In addition to identifying all personal calls on the employee’s monthly cell phone statement, the employee must note the purpose of each business call. In the absence of such documentation, the IRS can treat all undocumented calls as personal and the value of those calls as wages, even if the calls were mostly business calls. Receiving a taxable allowance to purchase a personally-owned cell phone and service plan eliminates the requirement for you to track your business and personal calls.

2. **I have used an Agency owned cell phone for a long time with no problems. Why the change?**
   The IRS considers cell phone use a taxable fringe benefit if the business and personal use cannot be substantiated.

3. **Why is a cell phone treated differently than the phone on my desk?**
   Because a cell phone is portable and may be taken off the employer’s business premises, Congress established the detailed business substantiation rules applicable to this equipment and similar devices. The business use rules that apply to equipment intended to stay in your office, such as a desk phone, are less restrictive.

4. **This seems ridiculous. Why are you putting us through this?**
   While the documentation requirements may seem unreasonable to us and the average taxpayer, the IRS takes them very seriously in its audits of businesses receiving government
funds. The change to our policy will help to ensure that we are in compliance with all applicable laws and regulations.

5. Why is the allowance I receive for my cell phone taxable? Is this fair?
The allowance amount is taxable income because you will not be required to provide detailed documentation of your business calls or reimburse the agency for any personal calls you make.

6. How will I be able to pay the taxes on the allowance if the amount I receive is based on my business use?
The allowance will include the applicable taxes that you will be required to pay, in other words, the allowance amount has been “grossed up” to include all applicable taxes.

7. How much is the allowance and how was the allowance calculated?
Based upon historical usage information, the agency anticipates that employees whose jobs require them to have access to a cell phone will have an average monthly usage of 250 minutes. For the major cell phone providers, their basic plan typically includes 450 minutes per month; therefore, the allowance amount has been calculated utilizing the average minutes and cost of a basic plan and will be the same for all employees.

The anticipated business usage of a personally-owned cell phone is an average of 250 minutes per month, which equates to 55% of the available minutes of a basic plan assuming the plan offers 450 minutes and costs $40 per month. Based upon this assumption, the approved allowance for all eligible employees will be $22 per month, which will be increased or “grossed up” to reimburse the employee for applicable payroll taxes. The following standard tax rates were used to calculate the monthly allowance: federal income taxes, 25%; State of California income taxes, 6%; Social Security, 6.2%; and Medicare, 1.45%. To obtain the full allowance amount, the IRS formula* for “grossing up” taxable payments was used. In other words, based upon a $40 per month cell phone plan, the monthly allowance, including reimbursement for taxes, will be $35.00 calculated as follows:

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A = \text{Monthly Allowance} \\
A = \text{Plan Cost} \times 0.55 / 1 - \text{Applicable Tax Rates} \\
A = 40 \times 0.55 / 1 - 0.25 - 0.045 - 0.062 - 0.0145 \\
A = 22 / 0.6285 \\
A = 35.00
\]
*Under the IRS formula, the state rate must be reduced by the federal rate (i.e., .06 – (.25 x .06) = .045) since state taxes paid by an individual are deductible on his or her federal income tax return.

8. **What if my federal and state tax brackets are higher than 25% and 6%, respectively?**
The goal of the cell phone allowance program is to relieve employees of the burdensome and time-consuming task of documenting their business and personal calls. For this reason, standard allowances have been established that approximate an employee’s business need and tax liability. Calculating individual allowances based on an employee’s marginal income tax rates would introduce a new level of complexity that would be at odds with the agency’s goal to reduce the burden associated with this business benefit.

9. **What if my actual business usage exceeds the amount of the monthly allowance I receive?**
The monthly allowance is based upon the average business usage of your cell phone so there may be months in which you exceed or fall below the anticipated 250 minutes per month. If your business use temporarily spikes for only a month or two, you may request an expense reimbursement for your unreimbursed business calls, if the calls cause additional charges to be incurred on your phone bill. In other words, if the additional calls are still within your allowed plan minutes, an additional reimbursement will not be provided. If the calls cause you to exceed your allowed plan minutes, you will need to submit an expense reimbursement request to your supervisor with a copy of your cell phone statement noting the calls and the business purpose for each call. However, the usage of your cell phone in lieu of using available land lines during business hours, i.e. using your cell phone excessively while in the office, will not justify the request for a reimbursement.

10. **What if my cell phone is lost or stolen or damaged?**
A cell phone acquired according to the provisions of the policy is considered to be the personal property of the employee, and any service contract entered into by the employee is personal to the employee. If equipment is lost, damaged or malfunctioning, it will be the employee’s responsibility to maintain/replace the equipment at his/her own expense.
11. Does everyone get a taxable allowance for a personally-owned phone?
No. You will only receive an allowance if your position requires that you carry a cell phone where other less expensive means of communication are not adequate or are unavailable. For those that are not eligible to receive an allowance, checkout/on-call phones will be available for use as needed.

12. Can I use my cell phone for personal calls when I purchase it with a taxable allowance from the Agency?
Yes. Because you own the phone, you do not have to document personal calls.

13. Can I purchase additional minutes for personal use if I pay for the minutes myself?
A cell phone acquired according to the provisions of the policy is considered to be the personal property of the employee, and any service contract entered into by the employee is personal to the employee.

14. Can I add a phone to an existing family plan if it is cheaper than buying a new phone and getting a new number under the allowance method?
Yes. You may receive the allowance to cover the cost of the additional phone line. In such cases that the allowance exceeds the total cost of the service plan, the allowance amount will be reduced to the amount of the service plan.

15. What about BlackBerrys and other PDA/phone combinations?
A phone purchase over and above the promotional phones offered by the cell phone providers will be the responsibility of the employee. If equipment is lost, damaged or malfunctioning, it will be the employee’s responsibility to maintain/replace the equipment at his/her own expense.

16. How about accessories like a Bluetooth, batteries, etc.?
A cell phone and any accompanying accessories acquired according to the provisions of the policy is considered to be the personal property of the employee, and any service contract entered into by the employee is personal to the employee.
17. Does the new policy cover data-only contracts for PDAs, 911 only calls, pagers, or other devices where no outgoing calls can be made?

Communications devices that do not have a cell phone calling capability such as “push-to-talk” devices, walkie-talkies, pagers, and similar devices are excluded from the allowance policy. PDAs with a data-only capability are also excluded from the policy.

18. How do I request the allowance? What happens after I am approved for an allowance?

You must submit the Cell Phone Allowance Request Form to your supervisor and Department Director for approval. If approved, the allowance will be added to your pay on your next regular pay day following the approval date, subject to payroll deadlines.

19. What if I leave the Agency before my cell phone contract expires? Will I be reimbursed for any cancellation fees?

If, prior to the end of the cell phone contract, a personal decision by the employee, or employee misconduct, or misuse of the phone, results in the need to end or change the cell phone contract, the employee will bear the cost of any fees associated with that change or cancellation.

20. Will the taxable allowance be included in my income for calculating other benefits?

No. Although the allowance will be paid to you as additional salary, it will not be included in your compensation for purposes of determining other benefits.

21. What if a cell phone provider will not sell me a cell phone plan because of my credit history?

If you are turned down for a cell phone plan by a provider, you will need to utilize the checkout/on-call phone assigned to your department/program. When a checkout/on-call phone is used by an employee, the employee will be required to document any personal use of the phone and timely reimburse the agency for any personal calls made using the device.
22. Do I have to pay for personal calls made on an agency-owned cell phone?
Yes, when an agency-owned phone is used by an employee, the employee will be required to document any personal use of the phone. The employee will be required to reimburse the agency for any personal calls made within 30 days of receiving notice of fees due.

23. Are there any exceptions to receiving a taxable allowance?
Certain employees or groups of employees will have access to an agency-owned cell phone where it would be impractical for the individuals to receive an allowance or due to security or other operational considerations. Checkout/On-Call phones will be made available for employees who are required to share a cell phone while on duty. When a checkout/on-call phone is used by an employee, the employee will be required to document any personal use of the phone and timely reimburse the agency for any personal calls made.

24. What if I decide I no longer need a phone? Can I cancel my cell phone contract?
If, prior to the end of the cell phone contract, a personal decision by the employee, or employee misconduct, or misuse of the phone, results in the need to end or change the cell phone contract, the employee will bear the cost of any fees associated with that change or cancellation.

If, prior to the end of the cell phone contract period, a departmental decision (unrelated to employee misconduct) results in the need to end the cell phone contract, the agency will provide a reimbursement of up to $100 of the cost of any fees associated with the cancellation. For example, the employee's supervisor has changed the employee's duties and the cell phone is no longer needed for business purposes. If the employee does not want to retain the current contract, up to $100 will be provided towards the cancellation fees. A final bill showing the fees must be submitted with an Employee Expense Reimbursement Form to obtain the reimbursement.
EMPOLOYEE-OWNED PHONES USED FOR AGENCY BUSINESS

25. If I use my personal cell phone for agency business, can I get reimbursed for those calls, if I am not approved for an allowance?
You may be reimbursed for your business calls but only if you exceed your plan minutes for the month and it was necessary for you to use your phone for business purposes. You may be reimbursed for those calls at the excess minute rate, up to the number of minutes exceeding your plan limit for the month. You will need to submit an Employee Expense Reimbursement Form to your supervisor with a copy of your cell phone statement noting the calls and the business purpose for each call. However, the usage of your cell phone in lieu of using available land lines during business hours, i.e. using your cell phone while in the office, will not justify the request for a reimbursement.

26. How will the reimbursement of my business calls be calculated?
You are only eligible for reimbursement of your business calls if you incur additional expenses by exceeding your plan minutes for the month. For example, assume you have 50 minutes of business calls but you exceed your plan minutes by only 30 minutes and incur overage charges of 40 cents per minute or $12.00 (30 x 40 cents). Your reimbursement would be limited to $12.00.

CHANGING FROM A AGENCY-OWNED PHONE TO A PERSONALLY-OWNED PHONE

27. Who does this policy apply to?
Anyone who is currently using an agency-provided cell phone must change to a personally-owned device or utilize a checkout/on-call phone.

28. What if I want to port/transfer my number to a personal account?
We understand that this would be the most convenient process for employees; however, because the conversion process can be inconsistent depending upon the carrier, we will not be allowing any of the current phone numbers to be ported/transferred to a personal account.

29. When do I have to turn in my agency-owned phone?
All phones must be returned to the IT Department by June 20, 2008. Please include your name and cell phone number with the phone.
30. Which monthly plans have the best price?
You should speak with one of the local carriers and/or check their websites or www.letstalk.com. Price should only be one factor in your choice. The lowest price carrier may not meet your coverage and other needs. You should take full advantage of any trial periods offered by the carrier and pay attention to your level of service during that period. The agency has negotiated special promotions and discounts with local branches of all of the major cell phone providers, who have agreed to waive activation fees and equipment costs for new contracts. Please review the promo sheet that was provided via email to determine the carrier of your choice and take a copy of the promo sheet to the branch listed to receive the promotional rate.

31. What if I don’t want to give out my personal cell phone number? Can I still receive the allowance?
No. In order to receive the allowance, you must agree to have your cell number published in the agency phone directory. If you are concerned about giving out your current cell phone number and would like to request the allowance, most cell phone providers offer an “add-a-line” feature to their calling plans. This will allow you to get a second number linked to your contract or a separate phone line with its own contract and minutes.

IRS GUIDELINES

32. Has the IRS published any guidelines that outline their position on cell phone taxation?
Yes. The IRS website includes additional information on employer provided cell phones. You can find this information at http://www.irs.gov/govt/fslg/article/0,,id=167154,00.html.