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**AOS Technical Update
Cell Phones**

Expenditures of public funds must first and foremost meet the Article III, Section 31 Constitutional criteria for public purpose/public benefit. Provided governmental entities have in policy and/or governing body action addressed and documented public purpose/public benefit of employer-provided cell phones and/or employer-paid allowances to employees for employee-provided cell phones, the following information addresses available IRS guidance:

The following information was provided by Kristy S. Maitre, IRS:

GUIDANCE ISSUED ON EMPLOYER-PROVIDED CELL PHONES
BY STEWART ROULEAU, FSLG TAX LAW SPECIALIST

On September 14, 2011, the Internal Revenue Service issued Notice 2011-72, addressing the tax treatment of employer-provided cell phones. The guidance relates to a provision in the [Small Business Jobs Act of 2010](#), enacted last fall, that removed cell phones from the definition of listed property, a category under tax law that normally requires additional recordkeeping by taxpayers. The Notice provides guidance on the treatment of employer-provided cell phones as an excludible fringe benefit. It states that when an employer provides an employee with a cell phone primarily for noncompensatory business reasons, the business and personal use of the cell phone is generally nontaxable to the employee. The IRS will not require recordkeeping of business use in order to receive this tax-free treatment.

Simultaneously with the Notice, the IRS announced in a [memo](#) to its examiners a similar administrative approach that applies with respect to arrangements common to small businesses that provide cash allowances and reimbursements for work-related use of personally-owned cell phones. Under this approach, employers that require employees, primarily for noncompensatory business reasons, to use their personal cell phones for business purposes may treat reimbursements of the employees' expenses for reasonable cell phone coverage as nontaxable. This treatment does not apply to reimbursements of unusual or excessive expenses or to reimbursements made as a substitute for a portion of the employee's regular wages.

Under [Notice 2011-72](#), where employers provide cell phones to their employees or where employers reimburse employees for business use of their personal cell phones, tax-free treatment is available without burdensome recordkeeping requirements. **The guidance does not apply to cell phones provided or reimbursement for cell-phone use that is not primarily business related, as such arrangements are generally taxable.**

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(continued)**

In addition, the Government Finance Officers Association (GFOA) has posted the following information and resources on its web site:

IRS Releases Final Regulations on Tax Treatment of Employer Provided Cell Phones

The IRS released final regulations (Notice 2011-72) on the tax treatment of employer provided cell phones (or other similar devices). The Notice implements the decision by the IRS and Treasury that any personal use of an employer provided cell phone is deemed to be a de minimis amount, and therefore not considered to be a taxable fringe benefit to the employee. However, the employer is required to demonstrate that the employee needs the cell phone in order to be contacted at all times for work related issues by the employer and/or have contact with clients after business hours.

The IRS also provided guidance to its field examiners on the issue of an employer reimbursing an employee for the business use of an employee's personal cell phone. If the employer deems that the employee must conduct business after business hours and needs to use a cell phone device, then the reimbursement payment from the employer to the employee is also considered to be a working condition fringe benefit, and excludable from the employee's income. However, the IRS notes that 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 that it does not exceed expenses the employee actually pays for maintaining the cell phone. The IRS provides examples of the guidance, including the need to monitor any significant deviations from a normal course of cell phone use and the amount of reimbursement.

IRS Notice 2011-72/Tax Treatment of Employer Provided Cell Phones:

<http://www.irs.gov/pub/irs-drop/n-11-72.pdf>

IRS 2011-72 Guidance for Field Examiners:

<http://www.irs.gov/pub/foia/ig/sbse/sbse-04-0911-083.pdf>