

ACUTA Alert: Update on the IRS Cell Phone Rules

In recent days there have been press reports that the IRS has placed its proposed rulemaking on cell phones on hold. These reports arose from a television interview with the Commissioner of the IRS, in which he called upon Congress to pass the pending legislation to remove cell phones as "listed property", and indicated that the IRS will not be moving forward with any initiatives in this area.

In the wake of these comments, we sought guidance for ACUTA members from tax attorney Michael Hepburn of Dow Lohnes PLLC. Mr. Hepburn's response appears below in its entirety. Please watch your e-mail and the ACUTA website Legislation & Regulation section under "Tax Issues" for more information as it becomes available.

As many will remember, under current IRS rules, cell phones issued to employees will be a taxable fringe benefit unless the employees use the phone exclusively for business purposes and provide detailed accounting of their use of their phones. The rules applicable to cell phones were first adopted in the late 1980's when the use of cell phones for business purposes was limited to very senior personnel. Obviously, today, cell phones are a common business tool and often issued by employers to significant numbers of employees.

There has been a great deal of confusion about the tax rules over the years, but not much enforcement action by the IRS. Several years ago, IRS auditors started to focus on cell phones as fringe benefits and a number of employers were assessed significant liability for failure to comply with the existing rules.

Last summer, the IRS issued a notice indicating that they planned to "update" the rules in an effort to make it "easier" for employers and employees alike to comply. Unfortunately, even under the IRS proposals, there are a number of problems and the administrative burdens would continue to be significant. Reaction from employers led IRS Commissioner Doug Shulman to issue a statement calling for Congress to repeal the tax rules applicable to cell phones and similar devices to ensure that they will not be taxable to employees. While there is legislation currently pending, no real progress has been made on repealing the rules.

Recently, Commissioner Shulman appeared on C-SPAN's "Newsmaker" and reiterated that he would like to see legislation changing the rules. In addition, he indicated that the IRS is not going to move forward with any initiatives in this area. We presume that these statements mean that last year's proposed rules "simplifying" the standards are on hold for now. In addition, we're hopeful that it also means that these issues won't be raised on audits. However, employers should be mindful that the old rules are still in place and employers should exercise caution in formulating or implementing cell phone policies -- it's not yet clear how, or when, this will be resolved.

We urge our members to consult with their tax advisors regarding policies or practices for their organizations.

ACUTA Legislative/Regulatory Affairs Committee