



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

OFFICE OF
CHIEF COUNSEL

April 24, 2008

Number: **INFO 2008-0012**

Release Date: 6/27/2008

UIL: 132.03-00, 274.08-00, 280F.05-00

CONEX-112338-08

The Honorable Dennis Moore
U.S. House of Representatives
Washington, DC 20515

Attention:

Dear Mr. Moore:

I am responding to an email of _____, from your legislative assistant, _____ . _____ wrote that states and localities are having difficulty drafting cell phone policies that comply with IRS recordkeeping requirements for employer-provided cell phones.

Under section 132 of the Internal Revenue Code, an employee may exclude from gross income the business use of an employer-provided cell phone as a working condition fringe benefit. Because cell phones are listed property in section 280F, strict substantiation requirements must be satisfied for business cell phone usage to qualify for the section 132 exclusion. Moreover, any personal usage of an employer-provided cell phone is a taxable fringe benefit. Thus, the current rules require documentation of the business and personal use of the cell phone.

However, because certain aspects of today's business environment make it difficult to document the business and personal use of the phone, various changes to the cell phone substantiation requirements are under consideration. _____ and _____ of my office spoke with _____ about certain proposed legislative changes that would remove cell phones from the definition of listed property and allow employers to utilize a de minimis personal use policy. The IRS and Treasury Department are also considering possible regulatory changes to the existing rules that would provide a more streamlined substantiation process for cell phones.

I hope this information is helpful. If you need further assistance, please call me at
or at .

Sincerely,

George Blaine
Associate Chief Counsel
(Income Tax & Accounting)