



To: County Council Members  
From: Bob Wasserbach  
Subject: Tax Implications of Employer-Provided IPADs  
Date: March 8, 2013

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### **Issues Presented**

1. If the County provides IPADs<sup>1</sup> to County Council Members, are there any Internal Revenue Code (IRC) tax implications from doing so?
2. If so, does the County have adequate policies and procedures to address these IRC implications?

### **Conclusions**

1. An IPAD is considered by the IRS to be “other similar telecommunications equipment” and, therefore, subject to the same rules as employer-provided cell phones. Thus, as long as there is a non-compensatory business reason for an employer-provided IPAD, then the values of both the business usage and the personal usage are excludible from the employee’s gross income (and the employee does not have to substantiate his/her business usage versus personal usage).
2. Neither the County Council nor the County Executive Branch has adequate policies and procedures to address the IRC implications of employer-provided IPADs. To ensure that there is a non-compensatory business reason for the individual receiving the IPAD, management needs to do the following:
  - County Council must establish its own policy on the issuance of IPADs (which should also cover cell phones), ensuring the policy reflects IRS Notice 2011-72 and that it requires a non-compensable business reason for the issuance of the IPAD (or other tablet device) to a County Council employee. The examples of non-compensable business reasons provided in IRS Notice 2011-72 are ones addressed towards cell phones; therefore, Council will need to establish its own examples of non-compensatory business reasons for IPADs.
  - County Executive Branch management must update its own policy on mobile communication devices to ensure it reflects IRS Notice 2011-72 and to ensure IPADs (or other tablet devices) are only being issued to employees for non-compensable business reasons. The examples of non-compensable business reasons provided in IRS Notice 2011-72 are ones addressed towards cell phones; therefore, the County Executive Branch will need to establish its own examples of non-compensatory business reasons for IPADs.

Each government branch’s policy should require formal documentation of the non-compensable business reason for the employee receiving the IPAD. It should also state that the IPAD is the property of the County and will be returned to the County upon the end of the device’s life cycle or the IPAD holder’s termination of County employment.

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<sup>1</sup> Although the issue being researched is IPADs, the conclusion in this memorandum addresses any tablet device – not just an IPAD.

## Research

IRC Section 61(a) states “gross income means all income from whatever source derived, including ... (1) Compensation for services, including fees, commissions, *fringe benefits*, and similar items.” Therefore, the general rule is that an employee’s gross income potentially includes not only all payments of cash but also the value of all awards of property and all provision of goods, services, or facilities arising out of an employee’s employment relationship with an employer.

Notwithstanding the general rule of inclusion, the IRC specifically provides that certain cash and noncash benefits made available to employees are not included in their gross income.

If an employer provides a cell phone to an employee, and the employer acquires and pays the costs of using the cell phone, the employee receives a fringe benefit. Prior to January 1, 2010, to the extent that the employee used the employer’s cell phone for business purposes, the fair market value of such usage qualified as a working condition fringe benefit excludable from the employee’s gross income, provided that the substantiation requirements of IRC Section 274(d) are met (which required, for instance, the employee to keep track of business use versus personal use). However, to the extent the employee used the employer’s cell phone for personal purposes, the fair market value of such usage was required to be included in the employee’s gross income.

IRS Notice 2011-72, effective January 1, 2010,<sup>2</sup> provides that, for cell phones and “other similar telecommunications equipment” where the device is provided primarily for non-compensatory business reasons, the employee:

- Does not have to keep records of his/her business use and personal use.
- The personal use of such device is considered to be a “de minimis fringe benefit” and such value is excludable from gross income, and the business use is considered to be a “working condition fringe benefit” and is also excludable from gross income.

The IRS, in Notice 2011-72, considers an employer to have provided an employee with a cell phone for “non-compensatory business reasons” if there are substantial business reasons for relating to the employer’s business. For example,

- The employer’s need to contact the employee at all times for work-related emergencies.
- The employer’s requirement that the employee be available to speak with clients (constituents) at times when the employee is away from the office.
- The employee’s need to speak with clients (constituents) outside of the employee’s normal work day.

A cell phone provided to promote the morale or goodwill of an employee, to attract a prospective employee, or as a means of furnishing additional compensation to an employee is not provided primarily for non-compensatory business reasons.

The big question is whether an IPAD is considered to be “other similar telecommunications equipment” and thus subject to the same rules as cell phones. Or is an IPAD considered to be in the IRC category of “computers and other peripheral equipment”, which has more strenuous recordkeeping requirements and which would require the County to report the Council Member’s personal usage of the IPAD as taxable income.

According to the Bloomberg Bureau of National Affairs (BNA’s) U.S. Income Tax Portfolio on Employee Fringe Benefits, “Notice 2011-72 and the audit guidance do not clearly address all employer issues and concerns,

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<sup>2</sup> Please note that the County could be subject to penalties for its treatment of employer-provided cell phones prior to January 1, 2010. During this time period, employees were required to substantiate the business use of cell phones. We express no opinion on this issue as our memorandum is dealing with current law.

for example, the definition of ‘similar telecommunications equipment’ and, therefore, it is not clear whether this guidance covers employer-provided tablet devices. To the extent that a tablet does not include cell phone service, the application of the above guidance to an employer-provided tablet ... is not clear.”

Although the IRS not provided any official guidance to the public on whether an IPAD is considered to be “other similar telecommunications equipment”, the Internal Revenue Manual (used by IRS Examiners), in Part 4, Chapter 23, Section 5, states “Tablet devices, such as IPADs, are considered ‘similar telecommunications equipment’.”

### **County Auditor – Other Thoughts**

Although not asked to research the federal tax implications of employer-provided cell phones and laptops, we offer these thoughts:

- It is clear from IRS guidance that, as long as there is a non-compensatory business reason for an employer-provided cell phone, then the values of both the business usage and the personal usage are excludible from the employee’s gross income (and the employee does not have to substantiate his/her business usage versus personal usage).
  - Please note, though, that the County’s policy on mobile communication devices needs to be updated to reflect IRA Notice 2011-72 and to ensure cell phones are only being issued to employees for non-compensable business reasons.
- For an employer-provide laptop, the value of the employee’s business usage is excludable from the employee’s gross income as a working condition fringe benefit as long as the employee substantiates the business use of the laptop. On the other hand, the value of the personal usage should be included in the employee’s gross income unless it qualifies as a “de minimis fringe benefit” (i.e., the value is so small that accounting for it would be unreasonable or administratively impracticable). Management should determine if its policies and procedures adequately address the IRC implications of County-provided laptops.

County management should consider doing a review of all employee fringe benefits to ensure the County is in compliance with IRC rules and regulations.

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