



# Bulletin

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2009-14B

## **TAXATION OF POLES AND WIRES ON PUBLIC WAYS**

TO: Assessors, Accountants, Auditors, Mayors, Selectmen, City/Town Managers, Finance Directors, City/Town Councils, City Solicitors and Town Counsels

FROM: Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

DATE: July 2009

SUBJECT: Taxation of Telecommunications Corporation Poles and Wires on Public Ways

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This *Bulletin* explains a section of the Fiscal Year 2010 state budget regarding the taxation of poles and wires of telephone and other telecommunications corporations located on public ways. St. 2009, c. 27, § 25. This amendment is effective as of January 1, 2009 and applies to taxes assessed for fiscal years beginning on and after July 1, 2009. St. 2009, c. 27, § 149.

### **Centrally and Locally Valued Poles and Wires**

Section 25 of the FY10 state budget eliminates the historical exemption from local taxation for poles and wires owned by telephone and telegraph, cable television, internet, data service and other telecommunications corporations and located on public ways that was based on court decisions. See *Assessors of Springfield v. Commissioner of Corporations and Taxation*, 321 Mass. 186 (1947); *Warner Amex Cable Communications, Inc. v. Assessors of Everett*, 396 Mass. 239 (1985). Specifically, it amends G.L. c. 59, § 18, Fifth, which governs the person to whom and the place where poles and wires are assessed and was at issue in those decisions. As you know, last year, in a case involving telephone corporations centrally valued by the Department of Revenue (DOR), the Appellate Tax Board (ATB) ruled that these poles and wires are taxable under another clause of G.L. c. 59, §18 and the DOR included them in its FY09 central valuations. See *Verizon New England, Inc. Consolidated Central Valuation Appeals*, ATB Docket No. C273560; [Bulletin 2008-03B, Assessment of Poles and Wires on Public Ways](#). That ruling is still subject to appeal, but this amendment expressly makes the poles and wires taxable under G.L. c. 59, § 18, Fifth beginning in FY10.

Assessors were advised that the legal rationale of the ATB decision applied to locally valued cable television and other telecommunications corporations with poles and wires on public ways and they could assess those assets in FY09. If assessors did not assess them in FY09, they must now do so for FY10. An updated or supplemental return should be requested from the companies as soon as possible so that values can be determined and any new growth attributable to taxation of these assets for the first time can be reported before the FY10 tax rate is set.

If assessors are unable to obtain the necessary information about the locally valued assets from the corporations in time to complete valuations before the FY10 rate, they may use the omitted or revised assessment procedure to assess the assets for the year. St. 2009, c. 27, § 149. Usually, that procedure can only be used to assess taxes on property that was not originally taxed for the year due to an unintentional clerical or data processing error. Assessments must be made by June 20, 2010, or 90 days after the fiscal year 2010 actual bills are mailed, if later. G.L. c. 59, §§ 75 and 76. Any new growth for FY10 would be reported as amended new growth before setting the FY11 tax rate.

### Overlay Reserves

Beginning with FY10, the poles and wires of centrally and locally valued corporations located on public ways are taxable and assessors do not have to include any additional monies in their overlay accounts to cover potential abatements to taxpayers based on claims these assets are exempt. **Until the final outcome of the Verizon case is known, however, communities have a potential abatement exposure for their FY09 assessment of the assets. Therefore, assessors must continue to reserve the monies included in FY09 overlays to cover those potential abatements.**

If you have questions about the legal aspects of this *Bulletin*, please contact the Bureau of Municipal Finance Law at 617-626-2400. Questions about valuation and new growth should be directed to John Gillet in the Bureau of Local Assessment at 617-626-3605.