



January 21, 2011

TO: Telephone and Telegraph Filers
FROM: Marilyn H. Browne, Chief
Bureau of Local Assessment
COPY: Boards of Assessors
TOPIC: **Landline Telephone and Telegraph Return for FY2012**

The **filing deadline** is on or before March 1, 2011 for telephone and telegraph companies doing business in the Commonwealth. They are required to make a return (Form 5941) to the Commissioner of Revenue listing taxable machinery, poles, wires, underground conduits, wires and pipes located in each municipality as of January 1, 2011, pursuant to M.G.L. c. 59, §41. (If the due date for the return falls on a Sunday or legal holiday, it is automatically extended by law to the following business day. (See also M.G.L. c. 4, §9.) (Wireless telecommunications carriers must file Form 2MT (Mobile Telecommunications Form of List) with local boards of assessors, and should not file Form 5941 and 5941 Appendix.)

New for FY2012 is Appendix II, this form requests Massachusetts information that was previously submitted to the FCC in the ARMIS Report by companies and is used by us to assist in the determination of economic obsolescence. While the FCC no longer requires that data be submitted they still require that companies maintain the information in the event they request it.

Any company that is submitting a Form 5941 Appendix, is filing a return for the first time, has filed in the past and has not been centrally valued, or is not sure whether it must file a central return may also need to file timely local returns of property under M.G.L. c. 59, §29, or seek authority to file such return late, in order to protect its rights in the event the Commissioner determines that the company is not substantially a telephone/telegraph company and therefore not subject to central valuation. Any company that has taxable non-telephone property subject to local valuation must file a State Tax Form 2 (local return) with the local boards of assessors on such property as well as Form 5941 for centrally valued telephone property.

There is one court decision pending. On March 10, 2010 Verizon New England, Inc. v. Board of Assessors City of Boston, Newton and the Commissioner of Revenue filed an appeal with the Appeals Court over an Appellate Tax Board Decision. This case involves, among other things, whether aerial plant over public ways was taxable for FY2003 to FY2009 and whether construction work in progress (CWIP) was taxable under Clause the First. The case was heard on November 9, 2010 and we are awaiting a decision.

For determining **new tax base levy growth** companies are reminded that all personalty that is listed as new for calendar year 2010 and all personal property that is new to a community, whether it is new, used or transferred from another community, must be noted by placing a checkmark in the New Asset column on the spreadsheet "List of Telephone and Telegraph Personal Property."

State Tax Form 5941 and State Tax Form 5941 Appendices, are available on the Internet. Personalty will be valued by the cost approach using property identification codes that mirror those of the Federal Communications Commission (FCC) and generally accepted cost indices. All returns must be complete, submitted in the prescribed format and signed by the treasurer. Current year returns will be compared with previous years' returns and you must be able to account for discrepancies.

Taxable telephone and telegraph property includes:

- network property constructed and in service,
- cable without lit fiber (aka dark fiber or dark cable),
- construction work in progress (CWIP),
- all emergency and backup electric generators,
- spare parts and
- property retired from service and scheduled for removal.

The spreadsheet portion of the return uses drop down menus to assist you in the selection process. When using the spreadsheet portion of the return you should be aware of the following:

1. Data entry or upload capacity is 65,000 lines. If you need more lines please use an additional spreadsheet.
2. Installation years must be entered or uploaded as numbers. Text values will appear in red and proposed values will not be calculated.
3. Personal property descriptions must be selected from the list provided. Property identification code categories mirror those of the FCC and can be selected alphabetically or numerically.
4. Community names that are incorrect will appear in red. You must select the correct community name from the list provided in the spreadsheet.
5. Installation years earlier than 1960 will be highlighted in green to assist in discovery of any error in data entry or upload.
6. The nature of use column has three choices and only one must be selected.

State Tax Form 5941 must be submitted electronically in the Excel format requested to bladata@dor.state.ma.us along with a printed and signed copy. The treasurer of the company, by statute, must sign the return. The owner of the property and not the lessee, user or holder, regardless of whether there is an indefeasible right of use (IRU), is responsible for reporting the personal property to the Commissioner. Returns must be filed timely. Failure to provide all required information will cause the return to be treated as an incomplete filing.

Central valuation reporting requirements are based on company entity status. Property listed includes only machinery, poles, wires, underground conduits, wires and pipes used for providing telephone or telegraph service, which includes such property used for telephone and cable TV or telephone and Internet, but not property used solely for Cable TV or Internet. Taxable machinery not used for telephone or telegraph service, including machinery used solely for Cable TV or Internet, and other taxable personal property must be reported to the local boards of assessors where the property is situated using State Tax Form 2 (Form of List).

The following chart identifies the taxable status of telephone or telegraph personal property subject to *central valuation* based on the entity status of the company. If you have any questions contact John Gillet at 617-626-3605 or Walter Sandoval Dusza at 617-626-4087.

Legal Form of Owner of Property	Taxable Telephone Personal Property Reported to the Commissioner (Form 5941)
Corporation	<ul style="list-style-type: none"> • Poles and wires over private and public property • Underground conduits, wires and pipes in public or private property • Electric generating machinery
Limited Liability Company (LLC) or other non-incorporated legal entity treated as a corporation or disregarded entity for federal income tax purposes Other legal entity, including: <ul style="list-style-type: none"> • Partnership • Association • Trust 	<ul style="list-style-type: none"> • Poles and wires over private and public property • Underground conduits, wires and pipes in public or private property • All machinery, including electric generators, switching equipment and routers, used for telephone and telegraph service purposes