



K A N S A S

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DEPARTMENT OF REVENUE
DIVISION OF PROPERTY VALUATION

MEMORANDUM

TO: County Appraisers
FROM: Mark S. Beck, Director
DATE: March 16, 2005
SUBJECT: Bed and Breakfast Homes

Summary:

The 2004 Legislature in HB 2375 § 11 amended K.S.A. 79-1439 to provide that residential real property used *partially* for bed and breakfast home purposes may be classified entirely as residential property and eligible for the 11.5% assessment rate applicable to other residential property. If the residential real property is used *entirely* for bed and breakfast home purposes it should be classified as commercial. **The amendment was effective July 1, 2004. However, since the certification of the completed appraisal rolls had already occurred for the 2004 tax year, this provision should be applied beginning with the 2005 tax year.**

The 2004 Legislature in HB 2375 § 7 amended K.S.A. 79-201c *Second* to provide that household goods and personal effects when used in the home for bed and breakfast purposes as defined by K.S.A. 79-1439, as amended, are exempt from ad valorem taxation. Personal property that is used to produce income that does not qualify for the exemption, should be valued as commercial and industrial machinery and equipment. Personal property that has a retail cost when new of \$400 or less may be exempt pursuant to K.S.A. 79-201w. **The amendment was effective July 1, 2004, and relates back to January 1, 2004. As such, personal property that qualifies for the exemption may be exempted from January 1, 2004, forward. However, since the certification of the completed appraisal rolls has already occurred for the 2004 tax year, county appraisers do not have the authority to remove the personal property from the tax rolls for the 2004 tax year. The owners of such personal property will be required to file an exemption application with the Board of Tax Appeals in order to exempt the personal property for the 2004 tax year.**

A related question has arisen as to how a bed and breakfast should be valued. The real property should be valued based upon its fair market value, taking care not to include the value of the personal property or going concern.

Classification:

Effective July 1, 2004, residential real property used *partially* for bed and breakfast home purposes may be classified entirely as residential property and eligible for the 11.5% assessment rate applicable to other residential property. A residential property used fully for bed and breakfast home purposes is not eligible for the reduced assessment rate. A bed and breakfast home is defined to include residences with five or fewer bedrooms available for overnight guests who stay for not more than 28 consecutive days and for which there is compliance with all zoning and other ordinances or laws pertaining to facilities which lodge and feed guests.

To qualify for the residential classification, the bed and breakfast must: (1) be a residence (someone living in a portion of the home for greater than 28 consecutive days); (2) have five or fewer bedrooms for overnight guests; and (3) be in compliance with all zoning or other applicable ordinances or laws pertaining to facilities that lodge and feed guests. All three of these criteria must be met in order for the bed and breakfast to qualify for the residential classification. Note that the person residing in the home does not have to be the owner of the property or the operator of the bed and breakfast.

If the residential real property is used *fully* for bed and breakfast home purposes, it should be classified as commercial. Also, if it has more than five bedrooms for overnight guests, it should be classified as commercial. Finally, if the bed and breakfast is not in compliance with all zoning or other applicable ordinances or laws pertaining to facilities that lodge and feed guests, it should be classified as commercial.

If the bed and breakfast has more than five bedrooms for overnight guests and there is someone residing in a portion of the home for greater than 28 consecutive days, then mixed-use classification may be assigned. The portion used for bed and breakfast home purposes should be classified as commercial and the portion where someone is living should be classified as residential.

Valuation:

The real property should be valued based upon its fair market value, regardless of whether it is classified as residential or commercial. When considering the income approach to value, the county appraiser should be cognizant that the income stream may stem from not only the real property, but the personal property and/or going concern. Real property for property tax purposes does not include the going concern. (See K.S.A. 79-102; real property defined for property tax purposes).

If the bed and breakfast qualifies for the residential classification and 11.5% assessment rate, then the associated personal property is exempt from ad valorem taxation pursuant to K.S.A. 79-201c, as amended.

If the bed and breakfast does not qualify for residential classification and it is classified as commercial property, then the personal property shall generally be classified as commercial and industrial machinery and equipment and valued according to the formula set forth in K.S.A. 79-

1439 and Article 11, Section 1 of the Kansas Constitution. Generally, such personal property is used for commercial purposes - - to produce income. The Kansas Attorney General has opined that the term “equipment” is broad and includes beds, sheets and forks. (A.G. Op. 96-41)

However, if the personal property has a retail cost when new of \$400 or less, it may be exempt pursuant to K.S.A. 79-201w, and amendments thereto. The county appraiser has the discretion to exempt this type of property under K.S.A. 79-213(1)(3) without an application being filed with the Board of Tax Appeals, when the personal property clearly qualifies for exemption. When in doubt, the county appraiser must follow Directive #92-025 and assist the owner in applying for exemption through the Board of Tax Appeals.