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DIRECTIVE #19-039

TO: County Appraisers

SUBJECT: Classification and Valuation of Bed and Breakfast Facilities
This Directive Supersedes Directive #99-039

This directive is adopted pursuant to the provisions of K.S.A. 79-505(a), and shall take effect and be in force from and after the Director's approval date.

Summary

K.S.A. 79-1439 was amended during the 2016 legislative session to revise the definition of real property used for residential purposes for purposes of classification.

For purposes of classification, a "bed and breakfast" is now defined as "a property with five or fewer bedrooms available for overnight guests who stay for not more than 28 consecutive days for which there is compliance with all zoning or other applicable ordinances or laws which pertain to facilities which lodge and feed guests." K.S.A. 2018 Supp. 79-1439(b)(1)(A). "Real property used for bed and breakfast purposes" no longer requires the property to be utilized as a dwelling or home and will include lodges and cabins provided the above qualifications are met.

Article 11, § 1 of the Kansas Constitution and K.S.A. 79-1439(b)(1)(A) provide that real property used for residential purposes shall be assessed at 11.5%. Effective July 1, 2016 K.S.A. 79-1439(b)(1)(A) provides for assessment of:

"Real property used for residential purposes including multi-family residential real property, real property necessary to accommodate a residential community of mobile or manufactured homes including the real property upon which such homes are located, residential real property used partially for day care home purposes if such home has been registered or licensed pursuant to K.S.A. 65-501 *et seq.*, and amendments thereto, and real property used for bed and breakfast purposes at 11.5%. As used in this paragraph "bed and breakfast" means a property with five or fewer bedrooms available for overnight guests who stay for not more than 28 consecutive days for which there is compliance with all zoning or other applicable ordinances or laws which pertain to facilities which lodge and feed guests[.]"

In other words, "real property used for bed and breakfast purposes" qualifies for the residential classification provided it is: (a) a property with five or fewer bedrooms available for overnight

guests who stay for not more than 28 consecutive days and (b) for which there is compliance with all zoning or other applicable ordinances or laws which pertain to facilities which lodge and feed guests.

“Property” means a parcel under one contiguous ownership with one description used for bed and breakfast purposes which has five or fewer bedrooms available for overnight guests.

The statute no longer requires the real property be used in part for residential purposes to qualify as a “bed and breakfast” eligible for the 11.5% assessment rate. The property does not have to be the residence of a person who lives in a portion of the property for more than 28 consecutive days.

If the property has *more* than five (5) bedrooms available for overnight guests, it should be classified as commercial. If the property is not in compliance with all zoning or other applicable ordinances or laws which pertain to facilities which lodge and feed guests, it should be classified as commercial.

Whether “there is compliance with all zoning or other applicable ordinances or laws which pertain to facilities which lodge and feed guests” will depend on the zoning or other applicable ordinances or laws which pertain to facilities which lodge and feed guests which apply to the specific property at issue and the relevant facts.

Reservations made for lodging in a bed and breakfast facility by an online marketplace and hospitality service such as Airbnb, Inc. does not invalidate the residential classification provided it is (a) a property with five or fewer bedrooms available for overnight guests who stay for not more than 28 consecutive days and (b) for which there is compliance with all zoning or other applicable ordinances or laws which pertain to facilities which lodge and feed guests.

Classification

A bed and breakfast facility which offers *more* than five (5) bedrooms furnished for guest accommodation shall be classified as commercial, at least in part, if the occupants do not have extended stays. If occupants stay 28 consecutive days or less, then the bed and breakfast is akin to a hotel or motel, and the property (or portion thereof) that is utilized predominately for such short stays should be classified as commercial. If occupants typically stay more than 28 consecutive days, then the bed and breakfast facility is akin to a multi-family dwelling, and shall be classified as residential.

This approach to classification is consistent with the transient guest laws (K.S.A. 12-1692, K.S.A. 12-1696). It is also consistent with prior Kansas Board of Tax Appeals (BOTA) orders, which referenced sales tax statutes to distinguish between residential and commercial use. (*See, e.g., In the Matter of the Equalization Appeal of Tosti, Sam and Lisa A.*, Docket No. 96-9269-EQ, issued July 15, 1997, utilizing K.S.A. 79-3606 (u)). The sales tax statute formerly adopted by BOTA has since been repealed. However, the local transient guest tax laws continue to exist and are based upon the same premise as the former state sales tax.

Under the transient guest tax laws, a transient guest is a person who occupies a room in a hotel, motel or tourist court for not more than twenty-eight (28) consecutive days. (K.S.A. 12-1692(c) and 12-1696(c)). A “hotel, motel or tourist court” means:

“. . . any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or

various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than two bedrooms furnished for the accommodation of such guests.” (K.S.A. 12-1692(b) and 12-1696(b) (Emphasis added.)

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).

The personal property of a bed and breakfast facility 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, § 1 of the Kansas Constitution. Generally, such personal property is used for commercial purposes--to produce income. The attorney general has opined that the term “equipment” is broad and includes beds, sheets and forks. (A.G. Op. 96-41)

Commercial and industrial machinery and equipment acquired by qualified purchase or lease made or entered into after June 30, 2006, including commercial and industrial machinery and equipment transported into this state after June 30, 2006 for the purpose of expanding an existing business or creation of a new business, may be exempt from taxation pursuant to K.S.A. 79-223. If the personal property used by the owner to produce income has a retail cost when new of \$1,500 or less, it may be exempt from taxation pursuant to K.S.A. 79-201w. It is possible a bed and breakfast may be partly used as a residence. Any personal property that constitutes a household good or personal effect that is *not used for the production of income* may be exempt under K.S.A. 79-201c. The county appraiser has discretion over these exemptions. (K.S.A. 79-213(1) (3), (13) and 18)). However, when in doubt, the county appraiser should construe in favor of taxation and assist the owner in applying for exemption. See directive 92-025 or successive directive.

Approved: April 30, 2019



David N. Harper
Director of Property Valuation