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**Division of Property Valuation**

**DIRECTIVE #99-039**

**TO:** County Appraisers

**SUBJECT:** Classification and Valuation of Bed and Breakfast Facilities

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

Summary

A question has arisen as to how a bed and breakfast facility should be classified. A bed and breakfast facility which has more than two bedrooms furnished to accommodate guests should be classified as commercial, at least in part, if the occupants stay 28 consecutive days or less. If the occupants stay more than 28 consecutive days, then the bed and breakfast facility should be classified as residential.

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. The personal property should be valued as commercial and industrial machinery and equipment, if it is used to produce income. Personal property that has a retail cost when new of \$250 or less may be exempt at the county appraiser's discretion. If the personal property is a household good or personal effect that is not used to produce income, it may be exempt at the county appraiser's discretion.

Classification:

A bed and breakfast facility which offers more than two 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. (1998 Supp.) 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. (1998 Supp.) 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, Section 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)

If the personal property used by the owner to produce income has a retail cost when new of \$250 or less, it may be exempt. (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) and (13)). However, when in doubt, the county appraiser should construe in favor of taxation and assist the owner in applying for exemption. (Directive 92-025).

Approved: February 24, 2000

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