



KANSAS BED AND BREAKFAST ASSOCIATION

221 Arch St., Leavenworth, KS 66048

888-572-2632 or 888-KSBANDB

www.kbba.com

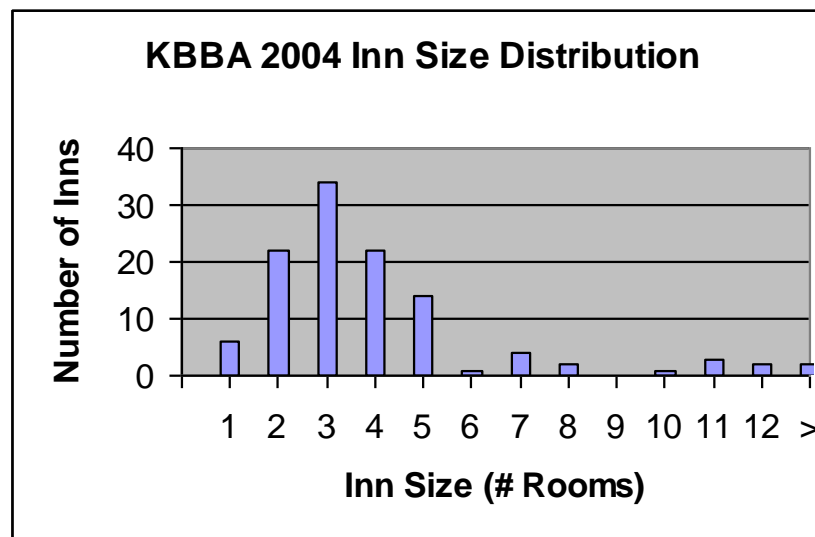
Subject: Request to modify legislation for B&B classification for inns with five or less rooms.

Desired Outcome: Classify all B&Bs with five or less rooms as residential and make it effective as of 2005 tax year.

History: In 2003 & 2004, Kansas Bed & Breakfast Association (KBBA) and several Kansas innkeepers successfully worked with Representatives Krehbiel & Ruff, co-sponsors, to reclassify B&Bs from commercial to residential. The Department of Revenue, Property Valuation Division (PVD), subsequently issued a letter that kept the commercial classification on inns that weren't owner occupied. This letter circumvents the intent of the sponsors and Chairman Edwards, Tax Committee Chair.

Supporting Documentation:

- a. In 2004, the Kansas Legislature passed Senate Substitute for HB2375 (encl 1).
- b. PVD subsequently issued a letter to county appraisers on June 18, 2004 This letter significantly changed the intent of the legislators (encl 2).
- c. Representative Ruff wrote a letter to the Board of Tax Appeals that described the intent (encl 3).
- d. In 2004, KBBA provided the Tax Committee the following inn distribution chart. The distribution of inn size remains relatively constant.



Economic Impact:

- a. The Director of Budget determined the original legislation would have “no significant impact” for the 189± inns that had five or fewer rooms (encl 4)
- b. Today, KBBA has 35 inns that are at risk of commercial classification due to PVD’s letter. Now the economic impact is even less for these 35 inns.

Recommendation:

- a. Remove references to "partial" use.
- b. Remove references to "residence" restriction.
- c. Make the revisions effective with the 2005 tax year. The legislators intended to classify all small B&Bs as residential. The difference in taxes between the commercial rate and the residential rate since 2005 should be returned to the innkeepers.

Respectfully,

1/10/2011

X



Robert E. Topping Jr.

Prairie Queen B&B
KBBA Member Inn
221 Arch St
Leavenworth, KS 66048

B&B Extract - SENATE Substitute for HOUSE BILL No. 2375

AN ACT concerning taxation; amending K.S.A. 8-2411, 10-306, 79-332a, 79-1427a, 79-1439, 79-1459, 79-3458, 79-4216 and 79-5205 and K.S.A. 2003 Supp. 12-187, 12-198, 12-1770a, as amended by section 25 of 2004 House Bill No. 2647, 79-201b, 79-201c, 79-412, 79-2005, 79-3408, 79-3651 and 79-4217 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Sec. 7. On and after July 1, 2004, K.S.A. 2003 Supp. 79-201c is hereby amended to read as follows: 79-201c. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. The wearing apparel of every person.

Second. All household goods and personal effects not used for the production of income. The terms household goods and personal effects when used in this act, except as otherwise specifically provided, shall include all items of furniture, cooking utensils, refrigerators, deep freezers, washing and drying machines, dishwashers, stoves, ranges, ironers, vacuum cleaners, sewing machines, radios, record players, television sets, shop and hobby equipment used in or about the home, fishing equipment (not including boats), bicycles, yard and garden equipment, firearms, golf clubs, photographic equipment, jewelry, luggage, musical instruments, air conditioners if not a part of the central heating and air conditioning system, sailboards and pick-up truck shells. For the purposes of this paragraph, household goods and personal effects shall not be deemed to be used for the production of income when used in the home 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, *or when used in the home for bed and breakfast home purposes as defined in K.S.A. 79-1439, and amendments thereto.*

Third. All lands used exclusively as graveyards.

The provisions of this section shall apply to all taxable years commencing after December 31, ~~1998~~ 2003.

Sec. 11. On and after July 1, 2004, K.S.A. 79-1439 is hereby amended to read as follows: 79-1439. (a) All real and tangible personal property which is subject to general ad valorem taxation shall be appraised uniformly and equally as to class and, unless otherwise specified herein, shall be appraised at its fair market value, as defined in K.S.A. 79-503a, and amendments thereto.

(b) Property shall be classified into the following classes and assessed at the percentage of value prescribed therefor:

(1) Real property shall be assessed as to subclass at the following percentages of value:

(A) 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 ~~and~~, 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 residential real property used partially for bed and breakfast home purposes at 11.5%. As used in this paragraph "bed and breakfast home" means a residence 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 A N S A S

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE DIVISION OF PROPERTY VALUATION

MEMORANDUM

TO: All County Appraisers, County Clerks and County Treasurers

FROM: Tony R. Folsom, Deputy Director, Division of Property Valuation

DATE: June 18, 2004

SUBJECT: 2004 Legislation Pertaining to Property Tax Laws

The 2004 Legislature made changes to the property tax laws that have a varied effect upon our offices. Below is a summary by topic, along with the appropriate bill number and section. Following the summary, you will find the bills in numerical order.

Summary

Valuation:

Cellular Towers. Wireless communication towers, broadcast towers, antenna and relay sites are to be classified and valued as commercial and industrial machinery and equipment. *House Substitute for Senate Bill 147, § 12, adding a new section.*

Assessment:

Cellular Towers. Wireless communication towers, broadcast towers, antenna and relay sites are to be classified and valued as commercial and industrial machinery and equipment. *House Substitute for Senate Bill 147, § 12, adding a new section.*

Building on Leased Ground. A person recording or filing a lease agreement is required to include the words "building on leased ground" on the first page of the lease agreement, when improvements exist which are owned by entities other than the landowner. Failure to include these words may result in the improvements being assessed to the landowner. *Senate Substitute for House Bill 2375 §9, amending K.S.A 79-412.*

Residential Real Property Used for Bed and Breakfast Home Purposes. Residential real property used partially for bed and breakfast home purposes may be wholly classified as residential property and eligible for the 11.5% 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. *Senate Substitute for House Bill 2375 §11, amending K.S.A 79-1439.*

Classification of Improvements Not Contiguous to a Home. The definition of "residential" in K.S.A. 79-1459(e) is expanded to include noncontiguous land and improvements if such improvements are used to store household goods and personal effects not used for the production of income. *Senate Substitute for House Bill 2375 §12, amending K.S.A 79-1459.*

Definition of State Assessed Public Utility. K.S.A. 79-5a01 is amended to clarify that the definition of a public utility includes brokers that now or hereafter own, control and hold for resale stored natural gas in underground formations in Kansas. *House Substitute for Senate Bill 147, §4, amending K.S.A. 79-5a01.*

Exemptions:

Business Aircraft Exemption. The exemption for business aircraft is broadened by changing the use requirement from "exclusively" used for business purposes to "predominantly" used for business purposes. "Predominantly" is defined to mean at least 80% of the total use of the aircraft, or utilization of the aircraft such that all costs are deductible for federal income tax purposes. Also, if the owner's business is the leasing of aircraft, the lessee's use of the aircraft shall not be considered in determining the exemption. *House Substitute for Senate Bill 147, § 2, amending K.S.A. 79-201k.*

Public Utility Inventories. The exemption for certain public utility personal property moving in interstate commerce is repealed. Effective July 1, 2004, public utility inventories moving in interstate commerce, including stored natural gas, are taxable. *House Substitute for Senate Bill 147, §3, amending K.S.A. 79-201f.*

Cooperative Housing Exemption. The exemption for not-for-profit cooperative housing projects for persons having a limited or low income was broadened to include housing projects whose financing is from entities other than the U.S. Department of Housing and Urban Development (HUD), provided that the articles of incorporation or by-laws are amended to require that the corporations will continue to operate in compliance with certain HUD affordability income guidelines. *Senate Substitute for House Bill 2375 §6, amending K.S.A. 2003 Supp. 79-201b Fourth.*

Household Goods and Personal Effects Used in Bed and Breakfast Homes. The exemption for household goods and personal effects not used for the production of income was broadened to include household goods and personal effects used for bed and breakfast home purposes as defined in K.S.A. 79-1439, as amended. *Senate Substitute for House Bill 2375 §7, amending K.S.A 2003 Supp. 79-201c Second.*

Military Motor Vehicle Exemption. The exemption for motor vehicles owned by Kansas residents in the full-time, regular military service who are stationed outside the state was

broadened to include motor vehicles located within Kansas, but limited to two motor vehicles. *House Bill 2563 §3, amending K.S.A. 79-5107(e).*

Collection and Distribution:

Delinquent Personal Property Taxes in DG, SG, and JO Counties. Amends K.S.A. 79-2017 to add Douglas County and to remove Wyandotte County as counties who may use this alternative method of collecting delinquent personal property taxes. Also, a county treasurer in these counties may accept delinquent tax payment in full without payment of the interest due if the amount of the interest due is less than \$5.00. *House Substitute for Senate Bill 147, §1, amending K.S.A. 2003 Supp. 79-2017.*

Distribution of Taxes Paid Under Protest that were Assessed Pursuant to K.S.A. 79-332a and 79-1427a . Effective July 1, 2004, taxes paid under protest that were assessed on escaped oil and gas property pursuant to K.S.A. 79-332a and escaped personal property pursuant to K.S.A. 79-1427a may not be distributed until such time as the payment under protest appeal is final. *Senate Substitute for House Bill 2375 §§ 8, 10 and 13, amending K.S.A. 79-332a, 79-1427a and 79-2005.*

Related:

Sales and Use Tax on Isolated or Occasional Sale of Motor Vehicles or Trailers. The base for computing the sales and use tax on the isolated or occasional sale of a motor vehicle or trailer is the selling price of the motor vehicle or trailer or the value derived pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, whichever amount is higher. The actual selling price shall be the base for computing the tax on the isolated or occasional sale of wrecked or damaged vehicles. *House Substitute for Senate Bill 147, § 7, amending K.S.A. 79-3603.*

Dealers of Watercraft. The definitions of a "dealer" of vessels and "demonstrate" in K.S.A. 32-1102 are amended. Also, changes are made in the requirements and process for a dealer of vessels to obtain dealer certificates of number. *House Bill 2604, amending K.S.A. 32-1102, 32-1112, 32-1172 and adding a new section.*

County Fire Districts. County fire districts are allowed to contract for fire services with other fire districts, cities, townships or private entities and county commissioners may levy a tax for this purpose. *House Bill 2712 § 1, amending K.S.A. 19-3610.*

Acquisition of Land by Townships. Townships are allowed to acquire or lease up to 10 acres of land for township purposes without an election and the land is paid for out of the general fund or the general road fund of the township. The bill deletes a 3-acre limit on the amount of land a township may acquire if voters approve and issue general obligation bonds to pay the cost. *House Bill 2712 § 2, amending K.S.A 2003 Supp. 80-104.*

Creation of Township Fire District. Provides for a township or townships working together to create a fire district by adopting by resolution a proposition to create a new fire district, provides for the proposition to be presented to the voters of the proposed fire district and provides the

authority of the fire district after it is created. *House Bill 2712 §§ 4, 5 and 6 amending K.S.A 80-1540, 80-1541 and 80-1542.*

Disorganization of Township. If a township has no residents, the board of county commissioners by resolution may disorganize the township or consolidate it with the next closest township within the same county. *House Bill 2712 §7, adding a new section.*

Bills in Numerical Order

House Substitute for Senate Bill 147

§1: Delinquent Taxes on Personal Property In DG, SG, JO and SN Counties <input style="float: right;" type="checkbox"/>
--

Prior to the new law, a county treasurer in Johnson, Sedgwick, Shawnee and Wyandotte Counties was to use the separate method of collecting delinquent personal property tax provided for in K.S.A. 79-2017. Effective July 1, 2004, Douglas County is added and Wyandotte County is excluded from using this separate method of collecting delinquent personal property tax. Also, the prior law allowed the county treasurer in these counties to accept delinquent tax payment in full without payment of the interest due if the amount of the interest was less than \$1.00. Effective July 1, 2004, this amount is increased to \$5.00. Amending K.S.A. 2003 Supp. 79-2017.

§2: Business Aircraft Exemption

Prior to the new law, in order to qualify for the business aircraft exemption, the aircraft had to be actually and regularly used "exclusively" to earn income for the owner in the conduct of the owner's business or industry. County and state officials only reviewed the owner's use of the aircraft to determine whether it qualified for exemption. The language was construed to mean that the owner's exclusive use of the aircraft for business purposes would qualify it for exemption.

However, on May 30, 2003, the Kansas Supreme Court in *In re Tax Application of Central Kansas E.N.T. Associates, P.A.*, 275 Kan. 893 (2003), held that consideration must be given not only to the use of the aircraft by the owner, but also to all uses being made of the aircraft. In Response to this decision, the legislature amended K.S.A. 79-201k effective July 1, 2004, and relating back to January 1, 2003, to broaden the exemption by changing the use requirement from used "exclusively" for business purposes to "predominantly" used to earn income for the owner in the owner's business. "Predominantly" is defined to mean at least 80% of the total use of the aircraft, or utilization of the aircraft such that all costs are deductible for federal income tax purposes. Also, if the owner's business is the leasing of aircraft, the lessee's use of the aircraft shall not be considered in determining the exemption. Amending K.S.A. 79-201k.

§3: Public Utility Inventories

The exemption for certain public utility personal property moving in interstate commerce is repealed. Effective July 1, 2004, and applicable to all tax years beginning January 1, 2004, public utility inventories moving in interstate commerce, including stored natural gas, are taxable. This is legislative response to the Kansas Supreme Court's decision in the Meade County gas storage case, *In re Central Illinois Public Services Co.*, 276 Kan. 612, 78 P3d 419 (2003). Amending K.S.A. 79-201f.

Personal property which is not owned by a public utility and which is moving in interstate commerce through or over Kansas continues to be exempt under K.S.A. 79-201m as merchants' and manufacturers' inventory.

§4: Definition of State Assessed Public Utility

Effective July 1, 2004, and applicable to all tax years beginning January 1, 2004, K.S.A. 79-5a01 is amended to clarify that the definition of a public utility includes brokers that now or hereafter own, control and hold for resale stored natural gas in underground formations in Kansas. This is legislative response to the Kansas Supreme Court's decision in the Meade County gas storage case, *In re Central Illinois Public Services Co.*, 276 Kan. 612, 78 P3d 419 (2003).

§7: Sales and Use Tax on Isolated or Occasional Sale of Motor Vehicles or Trailers

Effective July 1, 2004, the base for computing the sales and use tax on the isolated or occasional sale, as these terms are defined in K.S.A. 79-3602(q) and 79-3603(o), of a motor vehicle or trailer is the selling price of the motor vehicle or trailer or the VIPS value derived pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, whichever amount is **higher**. The actual selling price shall be the base for computing the tax on the isolated or occasional sale of wrecked or damaged vehicles. Amending K.S.A. 2003 Supp. 79-3603(o).

At the recent KCAA meeting, a question was asked concerning the definition of a "wrecked or damaged vehicle." The term is not defined by the new legislation. Questions concerning the interpretation of the new law should be addressed to the Kansas Department of Revenue, Division of Vehicles or the Division of Taxation Business Section.

§12: Cellular Towers

Wireless communication towers, broadcast towers, antenna and relay sites are to be classified for property tax purposes as commercial and industrial machinery and equipment within subclass 5 of class 2 of section 1 of article 11 of the Kansas Constitution. All such property is to be valued as commercial and industrial machinery and equipment in accordance with the formula provided in K.S.A. 79-1439(b)(2)(E). An exception applies to public utility property valued and assessed pursuant to K.S.A. 79-5a01 *et seq.* The amendment is effective July 1, 2004, for all tax years commencing January 1, 2003, forward.

Senate Substitute for House Bill 2375

§6: Cooperative Housing Exemption for Low Income Persons

Effective July 1, 2004, HB 2375 amends K.S.A. 2003 Supp. 79-201b *Fourth* dealing with the exemption from ad valorem taxation property that is actually and regularly used exclusively for housing for elderly and handicapped persons having a limited or lower income, or used exclusively for cooperative housing for persons having a limited or low income. The amendment changes the definition of "cooperative housing" to not only include those not-for-profit cooperative housing projects "operating" pursuant to sections 236 or 221(d)(3) of the national housing act but to also include such cooperative housing projects "established" pursuant to either of these sections.

Prior to amendment, K.S.A. 2003 Supp. 79-201b *Fourth* provided in part that in order for the cooperative housing to qualify for exemption, the financing of the project must have been provided by HUD and that the use of such property must have been restricted pursuant to the national housing act, statutes or rules and regulations thereof. The amendment broadens the exemption to include housing projects whose financing is from entities other than the U.S. Department of Housing and Urban Development (HUD), provided that the articles of incorporation or by-laws are amended to require that the corporations will continue to operate in compliance with certain HUD affordability income guidelines. *Senate Substitute for House Bill 2375 §6, amending K.S.A. 2003 Supp. 79-201b Fourth.*

At the recent KCAA meeting, a question was asked concerning the definition of "cooperative housing." Cooperative housing is defined in the statute and only those cooperative housing projects for persons having limited or low income that meet the definition therein qualify for the exemption.

§7: Household Goods and Personal Effects of Bed and Breakfast Homes

Prior to the new law, household goods and personal effects used in bed and breakfast homes were considered to be used for the production of income, and were therefore not exempt under K.S.A. 79-201c *Second*. Effective July 1, 2004, for all tax years commencing January 1, 2004, such personal property is deemed to not be used for the production of income in certain bed and breakfast homes as defined by K.S.A. 79-1439, as amended by *Senate Substitute for House Bill 2375 §11*. Effective July 1, 2004, K.S.A. 79-1439 is amended to provide that "bed and breakfast home" means "a residence 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." Basically, in order for the personal property to qualify for the exemption, the bed and breakfast must meet the requirements for the 11.5% classification as set forth in K.S.A. 79-1439, as amended by *Senate Substitute for House Bill 2375 §11*.

Please keep in mind that the county appraiser has the discretion to exempt this type of property under K.S.A. 79-213(1)(3), when the property clearly qualifies for exemption. When in doubt, the county appraiser must follow Directive #92-025. That is, the county appraiser should assist the owner in applying for exemption through the Kansas Board of Tax Appeals (BOTA), and relay the reasons for doubt to BOTA and the property owner.

§§ 8, 10, 13: Distribution of Tax Paid Under Protest assessed under K.S.A. 79-332a & 79-1427a

Prior to the new law, all taxes paid under protest, including escaped personal property taxes assessed pursuant to K.S.A. 79-332a and 79-1427a, were to be disbursed to the proper funds as provided in K.S.A. 79-2005(n). Effective July 1, 2004, escaped personal property taxes paid under protest that are assessed on oil and gas property pursuant to K.S.A. 79-332a and on personal property pursuant to K.S.A. 79-1427a may not be distributed until such time as the payment under protest appeal is final. Amending K.S.A. 79-332a, 79-1427a and 79-2005.

§9: Recording of Lease Agreements of Buildings on Leased Ground

Prior to the new law, improvements on leased ground would be assessed to the owner of the improvements if a copy of the lease agreement was recorded or filed in the office of the register of deeds. Effective July 1, 2004, a person recording or filing a lease agreement is required to include the words "building on leased ground" on the first page of the lease agreement, when improvements exist which are owned by entities other than the landowner. Failure to include these words may result in the improvements being assessed to the landowner. Amending K.S.A. 2003 Supp. 79-412.

At the recent KCAA meeting, a question was asked regarding this new provision. Does this new provision apply to leases already on file with the register of deeds or does it only apply to new leases filed after the effective date of the new law, July 1, 2004. The new law only applies to new leases filed on or after July 1, 2004.

§10: Distribution of Taxes assessed on Escaped Personal Property that are Paid Under Protest

See § 8.

§11: Residential Real Property Used for Bed and Breakfast Home Purposes

Prior to the new law, real property used for bed and breakfast home purposes was eligible for mixed-use classification as residential and commercial.

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 real 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) with five or fewer bedrooms for overnight guests; and (3) in compliance with all zoning or other applicable ordinances or laws pertaining to facilities that lodge and feed guests. 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. Amending K.S.A. 79-1439.

As indicated, this provision is effective July 1, 2004. However, since the certification of the completed appraisal rolls has already occurred for the 2004 tax year, this provision should be applied beginning with the 2005 tax year.

§12: Classification of Improvements Not Contiguous to a Home

The Board of Tax Appeals has ruled that garages and other outbuildings not contiguous to the owner's home that are used to store household goods and personal effects not used for the production of income are to be classified as "other" for assessment purposes. The Board's rulings are based in part on a finding that the definition of "residential" in K.S.A. 79-1459(e) includes only such land and improvements used as a dwelling or home. Since these garages and other outbuildings are not being used as a dwelling or home, the Board found they did not meet the definition of residential and could not be classified as such.

Effective July 1, 2004, the definition of "residential" in K.S.A. 79-1459(e) is expanded to include noncontiguous land and improvements if such improvements are used to store household goods and personal effects not used for the production of income.

Basically, the test is that if the noncontiguous building would be considered residential if it was located on the same parcel as the owner's home, then it should be classified as residential. If it would not be considered residential if located on the same parcel, then it should be classified accordingly.

As indicated, this provision is effective July 1, 2004. However, since the certification of the completed appraisal rolls has already occurred for the 2004 tax year, this provision should be applied beginning with the 2005 tax year.

At the recent KCAA meeting, there were questions asked regarding this new provision. First, does the \$20,000 exemption for residential property found in K.S.A. 79-201x, as amended, apply to noncontiguous properties used to store household goods and personal effects that are classified as residential? The answer is yes. K.S.A. 79-201x, as amended, indicates that the exemption applies to property used for "residential purposes." Therefore, as long as the property is classified as residential, the exemption applies.

Second, does the owner of the noncontiguous property have to live in the county where the noncontiguous property is located, or for that matter, does the owner have to live in Kansas? The answer is no. The only requirement of the new law is that the noncontiguous property be used to store household goods and personal effects not used for the production of income. There is no requirement that the owner of the noncontiguous property have any other property in the county or that the owner be a resident of Kansas.

§13: Distribution of Tax Paid Under Protest Assessed Pursuant to K.S.A. 79-332a and 79-1427a

See § 8.

House Bill 2563

§3: Military Motor Vehicle Exemption for Kansas Residents

Prior to the new law, a Kansas resident who served in the full-time, regular military service, absent from the State of Kansas solely due to military orders, could qualify to have their motor vehicle(s) exempt if the vehicles were located *outside* the state of Kansas. There was no limit to the number of motor vehicles that could qualify for the exemption.

Effective July 1, 2004, a Kansas resident who serves in the full-time, regular military service and who is "mobilized and deployed" on the registration date qualifies to have up to two of their motor vehicles exempt. Under the new law, the motor vehicle may be located outside *or within* the State of Kansas. The new terms "mobilized and deployed" appear to reflect current events (*e.g.*, reserve units serving in Iraq). Finally, the exemption is now limited to two motor vehicles. *House Bill 2563 §3, amending K.S.A. 79-5107(e).*

Please keep in mind that the county appraiser has the discretion to exempt this type of property under K.S.A. 79-213(1)(17), when the property clearly qualifies for exemption. When in doubt, the county appraiser must follow Directive #92-025. That is, the county appraiser should assist the owner in applying for exemption through the Kansas Board of Tax Appeals (BOTA), and relay the reasons for doubt to BOTA and the property owner.

It should be noted that the exemption for a recreational vehicle owned by a Kansas resident in the full-time, military service remains unchanged. The Kansas resident/owner must be absent from the State of Kansas solely due to military orders, and the recreational vehicle must also be located outside the State of Kansas. See K.S.A. 79-5121(e)

Please keep in mind that the Federal Soldiers' and Sailors' Civil Relief Act (50 U.S.C. §574) precludes the taxation of personal property located *within* Kansas borders when it is owned by a *Non-Kansas resident* who is stationed outside their home state and serves in the full-time, regular military service. This federal law is unaffected by the bill. See the 2004 Personal Property Summary, page 27, for more information regarding the federal law.

At the recent KCAA meeting, questions were asked concerning this exemption. First, will county appraisers be required to track vehicles that qualify. The answer is no. The exemption only applies if the person is full-time regular military and is mobilized and deployed "on the date of application for registration." Therefore, it is up to the owner, or their representative, to notify the county treasurer at the time of making application for registration that they meet the requirements of the statute. Second, when does the exemption end?

The exemption continues until the beginning of the registration period that they are no longer full-time regular military and mobilized and deployed.

The Personal Property Summary and the Personal Property Guide will be updated to reflect the new exemption law, which takes effect July 1, 2004.

HOUSE BILL 2604
All Sections Effective January 1, 2005

§§1-6: Dealers of Watercraft

The bill changes the definitions in K.S.A. 32-1102 of a "dealer" of vessels and "demonstrate" as the term relates to operating a vessel on the waters of Kansas for the purpose of selling, trading, etc. watercraft. Also, changes are made in the requirements and process for a dealer of watercraft to obtain dealer certificates of number. Provision is made that before a dealer of watercraft may obtain dealer certificate of numbers from the Department of Wildlife and Parks, proof must be made that the dealer has paid all personal property and sales taxes for the preceding year. Also, dealers are to file quarterly reports with the Department of Wildlife and Parks listing all sales and transfers of watercraft, including the name and address of the purchaser or transferee, the date of sales, and the serial or identification numbers of the watercraft. The Department of Wildlife and Parks is to make a copy of the quarterly reports available to the Kansas Department of Revenue.

This bill is not expected to have much of an impact for county personnel, but it may provide some benefit by helping to track purchasers of watercraft from dealers.

HOUSE BILL 2712
All Sections Effective July 1, 2004

§1: County Fire Districts

The bill expands the ability of county fire districts to contract with other entities for fire services by allowing a county fire district to not only contract with cities, but to contract for fire services with other fire districts, townships or private entities. Also, county commissioners may levy a tax for this purpose. Amending K.S.A. 19-3610.

§ 2: Acquisition of Land by Townships

The amount of land that townships are allowed to acquire or lease is increased from 2 acres to 10 acres of land for township purposes where no election is required and the land is paid for out of the general fund or the general road fund of the township. The bill deletes a 3-acre limit on the amount of land a township may acquire if voters approve and issue general obligation bonds to pay the cost. Amending K.S.A 2003 Supp. 80-104.

§§ 4, 5 & 6: Creation of Township Fire District

Provides for a township or townships working together to create a fire district by adopting by resolution a proposition to create a new fire district, provides for the proposition to be presented

to the voters of the proposed fire district and provides the authority of the fire district once created. Amending K.S.A 80-1540, 80-1541 and 80-1542.

§7: Disorganization of Township

If a township has no residents, the board of county commissioners by resolution may disorganize the township or consolidate it with the next geographically closest township that is within the same county. Prior to adoption of such a resolution, the board of county commissioners shall conduct a public hearing.

Rep Ruff Letter to BOTB

321 Arch St.
Leavenworth, KS 66048
Oct. 5, 2006

Kansas Board of Tax Appeals
Docking State Office Building
915 SW Harrison, Suite 451
Topeka, KS 66612-1505

Dear Members of the Board of Tax Appeals:

Because of my direct involvement in legislation that changed the classification of Bed and Breakfast operations in Kansas, I hope to clarify the thinking of legislators as we worked on this important issue. In 2004 Rep. Karl Kriebel and I co-sponsored a bill that changed the Bed and Breakfast classification, legislation that eventually passed in the form of Senate Substitute for House Bill 2375. For two years beforehand we partnered with members of the House Taxation Committee, participating as conferees and advocates in drafting the legislation. Because of my close association with this bill from inception to completion, I am troubled by the current administrative interpretation given by the Property Valuation Division (PVD) of the Kansas Department of Revenue. Frankly, I consider PVD's findings way off the mark and in violation of our legislative intent. We intended "residence" to describe a style of property and in no way planned for property "partially" used for B&B home purposes to exclude homes entirely used for B&B purposes.

A more clear understanding of our intentions may start with an explanation of the final legislation's evolution. The original versions of the text in 2002 and 2003 included the term "owner occupied" to mean any owner occupied residence. The actual language from 2003's HB 2287 is "As used in this paragraph, "bed and breakfast home" means an owner occupied residence..."

We chose subsequently to eliminate this clause because it omitted a category of homes that include carriage houses on a contiguous property and multiple properties, near one another, owned by the same individual. The Taxation Committee Chairman, Rep. John Edmonds, championed this change based on his constituents, Ed and Phyll Kilma, owners of Lizzies Cottage in Great Bend. The couple lived on the northwest corner of their

property in Great Bend, one block from the town square. Using four rooms in this home for B&B purposes, they owned an additional property at 1315 Stone that included two additional rooms used as a classic B&B for customers staying less than 28 days. This second property was used entirely as a B&B. Throughout the debate Chairman Edmonds insisted this legislation would consider both properties to be classified as residential.

In a similar fashion, we used the word “residence” as Webster Dictionary uses the term, “the place in which a person resides; dwelling place; abode; esp., a home.” However, Webster defines it in other ways as well, but never in a way to imply ownership or length of stay. Our intention was never to imply ownership or length of stay as a condition of residency. Our use of the term “residence” occurred to distinguish a home from a classic hotel chain. Our use of length of stay criteria came about to distinguish between a guest house which is already classified residential and the B&B. For PVD to rely on statutory definitions for the terms “residence” and “partially” imputes a restrictive condition that I consider goes beyond that which the legislators intended.

As you hear the appeal of Lincoln County residents, Gary and Ruth Sorensen, I would ask that you consider my concerns with the decisions made by PVD. This couple’s bed and breakfast is a classic example of the type B&B legislators intended to classify as residential. I would also ask that you consider revoking the March 16, 2005, PVD memorandum on Bed and Breakfast homes that distinguishes between partial and entire use. Should you do so, it would be helpful to direct PVD to instruct county appraisers to not distinguish between partial and entire use, making the instructions effective with the 2006 tax year. In the face of these actions, all Kansas B&Bs in a similar situation to the Sorensens will benefit from your sound judgment.

Sincerely,

Rep. L. Candy Ruff

March 12, 2003

The Honorable John Edmonds, Chairperson

House Committee on Taxation

Statehouse, Room 171-W

Topeka, Kansas 66612

Dear Representative Edmonds:

SUBJECT: Fiscal Note for HB 2287 by Representative Krehbiel and Ruff

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2287 is respectfully submitted to your committee.

HB 2287 would exempt from property tax all household goods and personal effects that are used in a home that operates as a bed and breakfast. The bill also requires that all bed and breakfast homes are assessed at the 11.5 percent assessment rate, which is the same rate applied to residential homes.

According to the Department of Revenue, if HB 2287 were enacted, bed and breakfast homes would no longer be subject to the state school district finance levy (20.0 mills), the state educational building levy (1.0 mill), or the state institutions building levy (0.5 mill). Even though the Department does not have any information relating to the assessed value of household goods and personal effects of bed and breakfast homes, it is estimated that any reduction to state funds "would not be significant."

Sincerely,

Duane A. Goossen

Director of the Budget

cc: Steve Neske, Revenue