

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