

**Kansas Bed & Breakfast Association
Tax Committee Testimony**

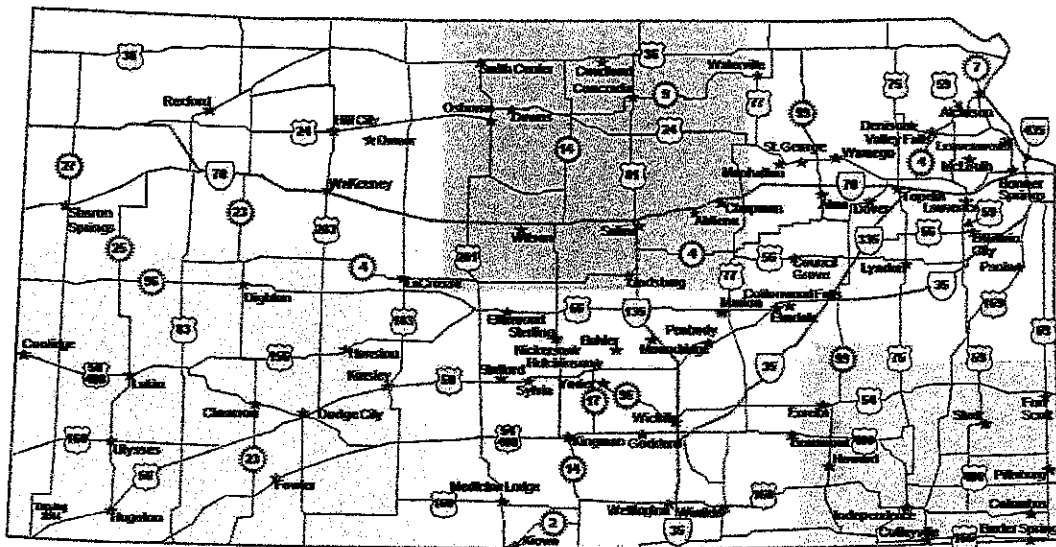
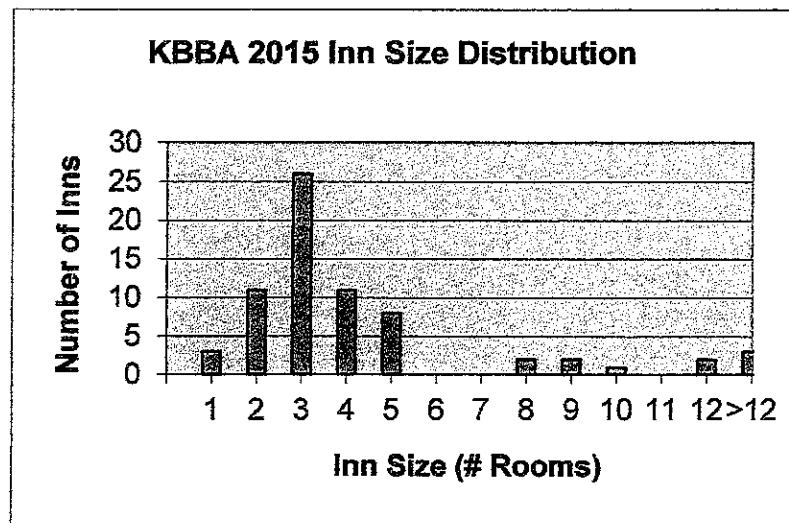
for
HB 2168
12 February 2015

Mister Chair & Honorable Committee Members,

The Kansas Bed & Breakfast Association (KBBA) supports HB 2168.

KBBA organized in 1990 and has been the only Kansas association for B&Bs. In 2004, we were successful in changing the classification for small inns from commercial to residential. Unfortunately, after the legislation passed, we learned that several categories of small inns were excluded. This caused 24 properties to be vulnerable to a commercial classification. These 24 properties were a variety of carriage houses, barns, adjacent properties, or separate properties. HB 2168 fixes the oversights from 2004. The bill now defines any B&B with 5 or fewer rooms as residential which is consistent with the original intent of KBBA and the legislators.

Bed & Breakfasts, by definition, are small. 85% of inns in Kansas have 5 rooms or less (see graph). They are also integral to many of Kansas's rural communities. The red stars on the map below depicts communities with bed & breakfasts. This is often the only lodging service in our rural communities. 18 of the 24 impacted inns are in communities of less than 2,500.



House Taxation
Date: FEB 12, 2015
Attachment: 2

The size of typical B&Bs highlight arbitrary the nature of the size threshold for residential vs. residential classification. The size distribution chart depicts KBBA's rationale for 5 rooms. KBBA member inns reflect a normal bell curve distribution for the size of our inns. Other thresholds affect B&B operations in Kansas. Each threshold is as arbitrary as the next. These thresholds include Transient Guest Tax (3 Rooms), Kansas Sales Tax & lodging license (4 Rooms), ADA requirements (6 rooms).

It is also important to understand that an inn must have between 8-10 rooms to generate enough income to sustain a family without any other forms of income. In other words, a typical B&B is a part time job that supplements a family's income.

The following are examples of current or former inns with potential commercial classification that KBBA believes should be residential.

- Carriage house (Crebase): classified commercial if the owner lives in the main residence.
- A barn/separate cabin (Elliott): currently classified commercial. The owner lives in the log cabin on same property. This case successfully appealed at local level *with the Republic/Cloud County Appraiser* due to *contracts that proved long-term stays greater than 28 days annually.*
- Family farm (Sorenson/Davis/Fuestz): A family homestead, a mile down the road from the owner's residence, is commercial.
- Second property (White): The Whites owned a second home in Holton. The second home is commercial. In this case, the properties are not contiguous. *The White's appealed to BOTA unsuccessfully (docket 2001-9389-EQ). They successfully appealed to the 2nd District Court, Jackson County (Case No. 03 C 11). The court found:*
 1. *with respect to the classification issue that Taxpayer White met her burden to prove the invalidity of the action of BOTA.*
 2. *that the Kansas Constitution and the real property taxing statutes require that all property in the State be uniformly and equally classed, assessed and taxed. (Article 11, Section 1, Kansas Constitution and KSA 79-1439(a).*
 3. *That the BOTA has the statutory duty to equalize the assessment and valuation of property throughout the State. (KSA 79-1409).*
 4. *That the agency has erroneously interpreted the law and has failed to assume jurisdiction and make a ruling on taxpayer's classification issue,*
 5. *That the only evidence before this court is that out of 51 bed and breakfast properties in the state, only 8 are taxed commercially.*
 6. *That the Kansas Constitution and KSA 79-1439(a) mandates that subject real estate be classified as residential property for tax year 2001 and be assessed and taxed accordingly based upon the fair market value of subject property as determined by the county appraiser.*
 7. *That there was substantial, credible evidence of residential use as required by the plain meaning of the constitution and the taxing statutes and subject property should be classed as residential.*

8. *That the failure of Jackson County and BOTA to carry out its functions as mandated by the law requires that the costs of these proceedings be taxed to Jackson County, Kansas. Such costs shall be the court filing fee of \$110.00, the costs of the BOTA transcript in the amount of \$222.50, and the costs of transcribing the record for appeal in the amount of \$773.00 (see attached receipts). This assessment of costs is the only way this court can effectively redress the failure of the county and the BOTA to act according to the state mandates and constitutional requirements of uniform and equal taxation.*

- Adjacent home (Klima): A small B&B purchased the property next door. This new or previously acquired property is commercial. This example pertains to a constituent of Rep John Edmonds, Great Bend, Chairman of the 2004 Tax Committee. He attempted to construct the 2004 revision to classify Ms Klima's property as residential. The PVD letter undermines Rep Edmonds' attempt to help his constituent.

In every example above, we are trying to make the case that all of them should be classified residential as long as the total room count stays at 5 rooms or less (actual criteria is based on the ability to accommodate 10 or fewer people. We often assume two people per room for easy discussion.). Other criteria include 28 day stay (28 days or more currently makes it a residential use).

Although we can cite examples of existing or past B&Bs, I have a vision of other properties coming on board as the entrepreneur explore options. We can call these intended consequences. Some examples are:

- A downtown loft over a storefront
- A renovated warehouse in a rural or urban setting
- Old schools or churches

Let our imagination consider other options. We are asking the legislature to create an environment to sustain our rural culture. Don't encumber imaginative re-uses with requirements for owner occupancy or partial portions of dwellings to remain a residence. Let size (number of rooms) dictate classification. KBBA recommends properties with 5 or fewer rooms be classified as residential.

The economic impact is minimal. We know there are 24 inns in the association covered by the proposed legislation. We can also make a guess about the amount of taxes each inn pays at the commercial rate (\$6,000). The change to a residential rate would be about \$3k x 24. Further, in 2004 and subsequent years, fiscal notes considered the legislation to have negligible impact. It still does.

Thank you for the opportunity to address you and request your support for HB 2168.

Person testifying:

Bob Topping, Retired Innkeeper

425 Pasadena Drive

Lawrence, KS 66049

bjtopping@sbcglobal.net, 913-704-9486

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