

### 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 The sales tax statute formerly adopted by BOTA has since been repealed.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(l) (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.

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David N. Harper, Director  
Division of Property Valuation

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### State of Kansas

#### Office of the State Bank Commissioner

#### Amended Administrative Interpretation No. 1004 Guaranteed Asset Protection

Administrative Interpretation No. 1004 was issued October 20, 1994 and first amended August 7, 1997. This Administrative Interpretation was further amended December 19, 2012, and again on April 30, 2019.

This Administrative Interpretation provides guidelines that must be followed for creditors to exclude the cost of Guaranteed Asset Protection ("GAP") waiver agreements from the calculation of the finance charge with consumer credit sales and closed-end consumer loans pursuant to the Uniform Consumer Credit Code. A GAP waiver agreement cancels or waives all or part of the outstanding balance due on a consumer's finance agreement in the event physical damage insurance does not pay the consumer's debt in full following a total loss or unrecovered theft of the vehicle. This Amended Administrative Interpretation is limited to GAP waiver products offered in connection with the finance agreement on a consumer vehicle. For purposes of this Amended Administrative Interpretation, "vehicle" means self-propelled or towed vehicles designed for personal use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, travel trailers, all-terrain vehicles, snowmobiles, and personal watercraft.

GAP waiver products may be offered to consumers and the charges for GAP products may continue to be excluded from the finance charge in Kansas provided the following conditions are met:

1. There must be a reasonable expectation that the condition will exist where the loan balance will exceed the fair market value of the vehicle at some point in time during the life of the loan in order for a creditor to offer GAP to the consumer. The price

charged for GAP shall be subject to the principles of unconscionability expressed in K.S.A. 16a-5-108.

2. In accordance with the Truth in Lending Act and implementing regulations, as they may be amended from time to time, all GAP waiver agreements must:
  - a. contain a written statement that GAP coverage is not required by the creditor;
  - b. disclose the cost of the GAP product; and
  - c. have the consumer affirmatively sign a written request for GAP coverage after receiving the required disclosures.
3. In addition to the requirements of the Truth in Lending Act, all GAP waiver agreements shall contain the following provisions:
  - a. The GAP waiver agreement must identify the name of the dealership or financial institution selling the GAP product and the GAP Administrator;
  - b. The GAP waiver agreement remains a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor;
  - c. The consumer must have no less than a 30-day unconditional right to cancel with a full refund of the purchase price of the GAP waiver agreement, provided no amounts have been waived pursuant to the agreement;
  - d. The GAP waiver agreement must include, at a minimum, coverage of the physical damage insurance deductible up to \$500; however, the GAP waiver agreement may cover deductibles in excess of \$500;
  - e. The GAP waiver agreement must include a warning in bold type that the GAP coverage may not cancel or waive the entire amount owing at the time of loss;
  - f. The procedure the consumer must follow to obtain GAP waiver benefits under the terms and conditions of the GAP waiver agreement, including a telephone number and address where the consumer may apply for waiver benefits; and
  - g. The GAP waiver agreement must contain a statement advising Kansas consumers how to contact the GAP provider with claims for GAP coverage, and that information shall be printed in bold font. The word "claims" shall be bolded and underlined. The form must also advise Kansas consumers that they may contact the Kansas Office of the State Bank Commissioner with complaints about their GAP waiver agreement at 700 SW Jackson, Suite 300, Topeka, KS 66603, <http://www.osbckansas.org/>. The word "complaints" should be bolded and underlined.
4. The GAP waiver agreement must provide coverage, subject to conditions and exclusions identified in the agreement, for all physical damage claims or unrecovered theft that constitute a total loss. All conditions and exclusions to GAP coverage must

be clearly and conspicuously disclosed in the GAP waiver agreement in easy to read language. A creditor or such other entity acting on the creditor's behalf shall not sell GAP coverage on a vehicle that does not meet the eligibility requirements of the GAP waiver agreement.

5. The amount waived or cancelled pursuant to the GAP waiver agreement shall be computed as the difference between the outstanding balance on the date of loss and the primary insurance carrier's determination of the Actual Cash Value of the vehicle. The GAP waiver agreement must clearly define the method used to determine the outstanding balance on the date of loss in a manner in which a consumer may reasonably be expected to understand, including disclosure of all items that will be excluded from the outstanding balance on the date of loss. (For example: delinquent or deferred payments, late payment charges, refundable items, etc.)

The GAP waiver agreement must uniformly define the term "Actual Cash Value" as the value established by the primary insurance carrier. If there is no primary insurance coverage at the time of the loss, the market value of the vehicle will be determined by the National Automobile Dealers Association ("NADA") Official Used Car Guide or equivalent. Terms such as "Payable Loss" and "Constructive Total Loss" must be consistent with this method of calculating the GAP waiver benefit.

6. The initial creditor that offers a GAP waiver agreement must report the sale of, and forward funds received on all such waivers to the designated GAP Administrator identified in the GAP waiver agreement.
7. Each creditor must insure its GAP waiver obligations under a contractual liability insurance policy issued by an insurer licensed in this state. Additionally, each creditor must maintain copies, in paper or electronic form, of all GAP waiver agreements for a period of not less than three years following the termination of the agreement. GAP administrators must also be prepared to provide records as requested by the Administrator of the Uniform Consumer Credit Code.

Failure to meet the requirements of this Administrative Interpretation will require that the cost of the GAP product to be included in the finance charge and disclosed accordingly.

This Amended Administrative Interpretation applies to all GAP waiver agreements executed on and after May 15, 2019.

Tim Kemp  
Acting Bank Commissioner

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