



Kansas Grain and Feed Association
Renew Kansas Biofuels Association
785.220.5211 | Randy@Kansasag.org

January 26, 2023

To: Senate Committee on Assessment and Taxation
From: Randy Stookey, Senior Vice President of Government Affairs, KGFA and RKBA
RE: **Joint Proponent Testimony on SB 8, reducing penalties for the late filing of and the failure to file personal property renditions and the discovery of escaped personal property.**

Chair Tyson and members of the committee, thank you for the opportunity to provide testimony on Senate Bill 8. This testimony is submitted jointly on behalf of the Kansas Grain and Feed Association (KGFA) and Renew Kansas Biofuels Association.

KGFA is the state association of the grain receiving, storage, processing, and shipping industry in Kansas. Renew Kansas is the trade association of the ethanol and biofuels industry in Kansas. These industries benefit the Kansas economy and pay millions of dollars annually in property taxes that help fund schools and provide local government services. In recent years, however, that property tax burden has grown exponentially.

Our members generally operate on tight margins, and the ability to operate a competitive business is often determined by the amount of overhead costs, such as taxes. Additionally, the issue of proper classification of our industry machinery and equipment – as personal property, rather than as fixtures to the realty – has been an on-going, and expensive, legal battle for many years.

We appreciate Senate Bill 8 being introduced, as it is especially relevant right now. Just last June, our industry was pleased to receive a [decision from the Kansas Court of Appeals](#)¹ wherein the court clarified that grain elevator machinery and equipment should be classified as personal property for property tax purposes, rather than as fixtures to the realty. This was a major change in how appraisers had classified grain assets for years and will likely result in tax savings for most grain elevators.

However, if grain elevators or other industries were to appeal their previous misclassified property, Kansas law would *mandate* a 50 percent penalty for failing to file a complete list of their personal property with the county appraiser. This is true even though the county appraiser and PVD had previously determined the assets to be real property. This is an absurd result and flawed public tax policy.

To attempt to set the penalty aside, the taxpayer must file an appeal with the state board of tax appeals (BOTA). A waiver of the penalty, however, is not mandatory.

¹*Dodge City Coop. Exch. v. Bd. of Cnty. Commissioners of Gray Cnty.*, 62 Kan.App.2d 391, 516 P.3d 615 (Kan. App. 2022)

As drafted, Senate Bill 8 would reduce the statutory penalties. We support this effort, but considering the recent Kansas appellate court decision, we would also suggest a friendly amendment.

Currently, county appraisers cannot extend the deadline to file a statement of property (in order to avoid assessing a penalty) unless the taxpayer submits a written request for an extension before the statutory deadline to file the statement.

We would propose an amendment to allow the county appraisers to extend the deadline for filing a statement, even after the deadline, and allowing them to grant a waiver of any penalty, for good cause shown, rather than requiring the taxpayer to appeal to the BOTA.

Granting this authority to county appraisers could alleviate a great deal of work for the BOTA as grain elevators may soon look to review misclassification of their assets following the *Dodge City Coop* decision.

In the case of Kansas grain elevators and ethanol plants, there is clearly good cause for why they would not have previously filed property statements as - prior to the *Dodge City Coop* decision - they would not have filed a property statement on assets that were previously classified as real property.

Therefore, we would propose the following amendments to Sections 2(a) and (c) of the bill:

Sec. 2. K.S.A. 79-1422 is hereby amended to read as follows: 79-1422. (a) Any person required to file a statement listing property for assessment and taxation purposes under the provisions of this act who fails to make and file such statement on or before the date prescribed by K.S.A. 79-306, and amendments thereto, shall be subject to a penalty as follows:

The appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add ~~5%~~ 2% thereto as a penalty for late filing if the failure is not for more than one month, with an additional ~~5%~~ 2% for each additional month or fraction thereof during which such failure continues, not exceeding ~~25%~~ 10% in the aggregate.

For good cause shown the appraiser ~~may shall~~ extend a reasonable amount of the time in which to make and file such statement. Such request for extension of time must be in writing and shall state just and adequate reasons on which the request ~~may shall~~ be granted. ~~The request must be received by the appraiser prior to the due date of the statement. For purposes of this section, after January 1, 2022, good cause for granting an extension of time in which to make and file a statement listing property for assessment and taxation purposes shall include, but is not limited to, previous classification of the property as real property or as a fixture to real property. Such previous classification shall specifically include machinery and equipment used in the grain storage and processing industry, ethanol processing industry, or other biofuels processing industry, that had been previously classified as real property or fixtures to real property.~~

(b) If, within one year following the date prescribed by K.S.A. 79-306, and amendments thereto, any person shall fail to make and file the statement listing property for assessment and taxation purposes or shall fail to make and file a full and complete statement listing property for such purposes, the appraiser shall proceed to ascertain the assessed value of the

property of such taxpayer, and for this purpose the appraiser may examine under oath any person or persons whom the appraiser deems to have knowledge thereof. The appraiser shall, after having ascertained the assessed value of such property, add 50% 12.5% thereto as a penalty for failure to file such statement or for failure to file a full and complete statement.

(c) The state board of tax appeals, or the county appraiser, shall ~~have the authority to~~ abate any penalty imposed under the provisions of this section and order the refund of the abated penalty, whenever excusable neglect on the part of the person required to make and file the statement listing property for assessment and taxation purposes is shown, or whenever the property for which a statement of assessment was not filed as required by law is repossessed, judicially or otherwise, by a secured creditor and such secured creditor pays the taxes and interest due. For purposes of this section, after January 1, 2022, excusable neglect for the failure to make and file a statement listing property for assessment and taxation purposes shall include, but is not limited to, the previous classification of the property as real property or as a fixture to real property. Such previous classification shall specifically include machinery and equipment used in the grain storage and processing industry, ethanol processing industry, or other biofuels processing industry, that had been previously classified as real property or fixtures to real property.

Thank you for allowing us the opportunity to testify in support of Senate Bill 8. We would ask the committee to consider adopting our proposed amendment and pass the bill out favorably.