

By the Committee on Commerce and Tourism; and Senator Altman

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1 A bill to be entitled
2 An act relating to the transfer of tax liability;
3 amending s. 213.758, F.S.; providing definitions;
4 revising provisions relating to tax liability when a
5 person transfers or quits a business; providing that
6 the transfer of the assets of a business or stock of
7 goods of a business under certain circumstances is
8 considered a transfer of the business; requiring the
9 Department of Revenue to provide certain notification
10 to a business before a circuit court shall temporarily
11 enjoin business activity by that business; providing
12 that transferees of the business are liable for
13 certain taxes unless specified conditions are met;
14 requiring the department to conduct certain audits
15 relating to the tax liability of transferors and
16 transferees of a business within a specified time
17 period; requiring certain notification by the
18 Department of Revenue to a transferee before a circuit
19 court shall enjoin business activity in an action
20 brought by the Department of Legal Affairs seeking an
21 injunction; specifying a transferor and transferee of
22 the assets of a business are jointly and severally
23 liable for certain tax payments up to a specified
24 maximum amount; specifying the maximum liability of a
25 transferee; providing methods for calculating the fair
26 market value or total purchase price of specified
27 business transfers to determine maximum tax liability
28 of transferees; amending s. 213.053, F.S.; authorizing
29 the Department of Revenue to provide certain tax

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30 information to a transferee against whom tax liability
31 is being asserted pursuant to s. 213.758, F.S.;

32 repealing s. 202.31, F.S., relating to the tax
33 liability and criminal liability of dealers of
34 communications services who make certain transfers
35 related to a communications services business;

36 repealing s. 212.10, F.S., relating to a dealer's tax
37 liability and criminal liability for sales tax when
38 certain transfers of a business occur; providing an
39 effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Section 213.758, Florida Statutes, is amended to
44 read:

45 213.758 Transfer of tax liabilities.—

46 (1) As used in this section, the term:

47 (a) "Business" means any activity regularly engaged in by
48 any person, or caused to be engaged in by any person, for the
49 purpose of private or public gain, benefit, or advantage. The
50 term does not include occasional or isolated sales or
51 transactions involving property or services by a person who does
52 not hold himself or herself out as engaged in business. A
53 discrete division or portion of a business is not a separate
54 business and must be aggregated with all other divisions or
55 portions that constitute a business if the division or portion
56 is not a separate legal entity.

57 (b) "Financial institution" means a financial institution
58 as defined in s. 655.005 and any person who controls, is

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59 controlled by, or is under common control with a financial
60 institution as defined in s. 655.005.

61 (c) "Insider" means a person as defined in s. 726.102(7),
62 and a manager of, or a managing member of, a person who controls
63 a limited liability company or a relative thereof as defined in
64 s. 726.102(11).

65 (d)~~(a)~~ "Involuntary transfer" means a transfer of a
66 business, assets of a business, or stock of goods of a business
67 made without the consent of the transferor, including, but not
68 limited to, a transfer:

69 1. That occurs due to the foreclosure of a security
70 interest issued to a person who is not an insider ~~as defined in~~
71 ~~s. 726.102;~~

72 2. That results from an eminent domain or condemnation
73 action;

74 3. Pursuant to chapter 61, chapter 702, or the United
75 States Bankruptcy Code;

76 4. To a financial institution, ~~as defined in s. 655.005,~~ if
77 the transfer is made to satisfy the transferor's debt to the
78 financial institution; or

79 5. To a third party to the extent that the proceeds are
80 used to satisfy the transferor's indebtedness to a financial
81 institution ~~as defined in s. 655.005.~~ If the third party
82 receives assets worth more than the indebtedness, the transfer
83 of the excess may not be deemed an involuntary transfer.

84 (e) "Stock of goods" means the inventory of a business held
85 for sale to customers in the ordinary course of business.

86 (f) "Tax" means any tax, interest, penalty, surcharge, or
87 fee administered by the department pursuant to chapter 443 or

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88 any of the chapters specified in s. 213.05, excluding chapter
89 220, the corporate income tax code.

90 (g) ~~(b)~~ "Transfer" means every mode, direct or indirect,
91 with or without consideration, of disposing of or parting with a
92 business, assets of the business, or stock of goods of the
93 business, and includes, but is not limited to, assigning,
94 conveying, demising, gifting, granting, or selling, other than
95 to customers in the ordinary course of business, to a transferee
96 or to a group of transferees who are acting in concert. A
97 business is considered transferred when there is a transfer of
98 more than 50 percent of:

99 1. The business;

100 2. The assets of the business; or

101 3. The stock of goods of the business.

102 (2) A taxpayer engaged in a business who is liable for any
103 tax arising from the operation of that business, ~~interest,~~
104 ~~penalty, surcharge, or fee administered by the department~~
105 ~~pursuant to chapter 443 or described in s. 72.011(1), excluding~~
106 ~~corporate income tax,~~ and who quits the a business without the
107 benefit of a purchaser, successor, or assignee, or without
108 transferring the business, assets of the business, or stock of
109 goods of a business to a transferee, must file a final return
110 for the business and make full payment of all taxes arising from
111 the operation of that business within 15 days after quitting the
112 business. ~~A taxpayer who fails to file a final return and make~~
113 ~~payment may not engage in any business in this state until the~~
114 ~~final return has been filed and all taxes, interest, or~~
115 ~~penalties due have been paid.~~ The Department of Legal Affairs
116 may seek an injunction at the request of the department to

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117 prevent further business activity of a taxpayer who fails to
118 file a final return and make payment of the taxes associated
119 with the operation of the business until such taxes ~~tax,~~
120 ~~interest, or penalties~~ are paid. A temporary injunction
121 enjoining further business activity shall ~~may~~ be granted by a
122 circuit court with jurisdiction over the taxpayer if the
123 department has provided at least 20 days' prior written notice
124 to the taxpayer without notice.

125 (3) A taxpayer who is liable for taxes with respect to a
126 business, ~~interest, or penalties~~ levied under chapter 443 or any
127 of the chapters specified in s. 213.05, ~~excluding corporate~~
128 ~~income tax,~~ who transfers the taxpayer's business, assets of the
129 business, or stock of goods of the business, must file a final
130 return and make full payment within 15 days after the date of
131 transfer.

132 (4) (a) A transferee, or a group of transferees acting in
133 concert, of more than 50 percent of a business, assets of a
134 business, or stock of goods of a business is liable for any
135 unpaid tax, ~~interest, or penalties~~ owed by the transferor
136 arising from the operation of that business unless:

137 1.a. The transferor provides a receipt or certificate of
138 compliance from the department to the transferee showing that
139 the transferor has not received a notice of audit and the
140 transferor has filed all required tax returns and has paid all
141 tax arising ~~is not liable for taxes, interest, or penalties~~ from
142 the operation of the business identified on the returns filed;
143 and

144 b. There were no insiders in common between the transferor
145 and the transferee at the time of the transfer; or

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146 2. The department finds that the transferor is not liable
147 for taxes, interest, or penalties after an audit of the
148 transferor's books and records. The audit may be requested by
149 the transferee or the transferor and, if not done pursuant to
150 the certified audit program under s. 213.285, must be completed
151 by the department within 90 days after the records are made
152 available to the department. The department may charge a fee for
153 the cost of the audit if it has not issued a notice of intent to
154 audit by the time the request for the audit is received.

155 (b) A transferee may withhold a portion of the
156 consideration for a business, assets of the business, or stock
157 of goods of the business to pay the tax ~~taxes, interest, or~~
158 ~~penalties~~ owed to the state by the transferor taxpayer arising
159 from the operation of the business. The transferee shall pay the
160 withheld consideration to the state within 30 days after the
161 date of the transfer. If the consideration withheld is less than
162 the transferor's liability, the transferor remains liable for
163 the deficiency.

164 (c) ~~A transferee who acquires the business or stock of~~
165 ~~goods and fails to pay the taxes, interest, or penalties due may~~
166 ~~not engage in any business in the state until the taxes,~~
167 ~~interest, or penalties are paid.~~ The Department of Legal Affairs
168 may seek an injunction at the request of the department to
169 prevent further business activity of a transferee who is liable
170 for unpaid tax of a transferor and who fails to pay or cause to
171 be paid the transferee's maximum liability for such tax due
172 until such maximum liability for the tax is, ~~interest, or~~
173 ~~penalties are paid.~~ A temporary injunction enjoining further
174 business activity shall ~~may~~ be granted by a circuit court with

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175 jurisdiction over the transferee if: ~~without notice.~~

176 1. The assessment against the transferee is final and
177 either:

178 a. The time for filing a contest under s. 72.011 has
179 expired; or

180 b. Any contest filed pursuant to s. 72.011 resulted in a
181 final and nonappealable judgment sustaining any part of the
182 assessment; and

183 2. The department has provided at least 20 days' prior
184 written notice to the transferee of its intention to seek an
185 injunction.

186 (5) The transferee, or transferees acting in concert, of
187 more than 50 percent of a business, assets of the business, or
188 stock of goods of a business who are liable for any tax pursuant
189 to this section shall be ~~are~~ jointly and severally liable with
190 the transferor for the payment of the tax ~~taxes, interest, or~~
191 penalties owed to the state from the operation of the business
192 by the transferor up to the transferee's or transferees' maximum
193 liability for such tax due.

194 (6) The maximum liability of a transferee pursuant to this
195 section is equal to the fair market value of the business,
196 assets of the business, or stock of goods of the business
197 property transferred to the transferee or the total purchase
198 price paid by the transferee for the business, assets of the
199 business, or stock of goods of the business, whichever is
200 greater.

201 (a) The fair market value must be determined net of any
202 liens or liabilities, with the exception of liens or liabilities
203 owed to insiders.

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204 (b) The total purchase price must be determined net of
205 liens and liabilities against the assets, with the exception of:

206 1. Liens or liabilities owed to insiders.

207 2. Liens or liabilities assumed by the transferee that are
208 not liens or liabilities owed to insiders.

209 (7) After notice by the department of transferee liability
210 under this section, the transferee has 60 days within which to
211 file an action as provided in chapter 72.

212 (8) This section does not impose liability on a transferee
213 of a business, assets of a business, or stock of goods of a
214 business pursuant to an involuntary transfer.

215 (9) The department may adopt rules necessary to administer
216 and enforce this section.

217 Section 2. Subsection (17) of section 213.053, Florida
218 Statutes, as amended by chapter 2010-280, Laws of Florida, is
219 amended to read:

220 213.053 Confidentiality and information sharing.—

221 (17) The department may provide to the person against whom
222 transferee liability is being asserted pursuant to s. 213.758 ~~s.~~
223 ~~212.10(1)~~ information relating to the basis of the claim.

224 Section 3. Section 202.31, Florida Statutes, is repealed.

225 Section 4. Section 212.10, Florida Statutes, is repealed.

226 Section 5. This act shall take effect July 1, 2011.