

1                   A bill to be entitled  
2       An act relating to the transfer of tax liability; amending  
3       s. 213.758, F.S.; providing definitions; revising  
4       provisions relating to tax liability when a person  
5       transfers or quits a business; excluding the corporate  
6       income tax from provisions relating to the transfer of tax  
7       liabilities when a business is transferred; providing that  
8       the transfer of the assets of a business or stock of goods  
9       of a business under certain circumstances constitutes a  
10      transfer of the business; requiring the Department of  
11      Revenue to provide certain notification to a business  
12      before a circuit court may enjoin business activity by  
13      that business; providing that transferees of the business  
14      are liable for certain taxes unless specified conditions  
15      are met; requiring the department to conduct certain  
16      audits relating to the tax liability of transferors and  
17      transferees of a business within a specified time period;  
18      limiting a transferee who is liable for unpaid taxes from  
19      engaging in business activities under certain  
20      circumstances; providing an exception during the pendency  
21      of a timely filed appeal; providing for the posting of  
22      security during the pendency of an appeal under certain  
23      circumstances; requiring certain notification by the  
24      Department of Revenue to a transferee before a circuit  
25      court may enjoin business activity in an action brought by  
26      the Department of Legal Affairs seeking an injunction;  
27      specifying a transferor and transferee of the assets of a  
28      business are jointly and severally liable for certain tax

HB 907

2011

29        payments up to a specified maximum amount; specifying the  
30        maximum liability of a transferee; providing methods for  
31        calculating the fair market value or total purchase price  
32        of specified business transfers to determine maximum tax  
33        liability of transferees; repealing s. 202.31, F.S.,  
34        relating to the tax liability and criminal liability of  
35        dealers of communications services who make certain  
36        transfers related to a communications services business;  
37        repealing s. 212.10, F.S., relating to a dealer's tax  
38        liability and criminal liability for sales tax when  
39        certain transfers of a business occur; providing an  
40        effective date.

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

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

46        213.758    Transfer of tax liabilities.—

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

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

HB 907

2011

57 is not a separate legal entity.

58 (b) "Financial institution" means a financial institution  
59 as defined in s. 655.005 and any person who controls, is  
60 controlled by, or is under common control with a financial  
61 institution as defined in s. 655.005.

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

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

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

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

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

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

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

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

HB 907

2011

85        (f) "Tax" means any tax, interest, penalty, surcharge, or  
86 fee administered by the department pursuant to chapter 443 or  
87 any of the chapters specified in s. 213.05, excluding corporate  
88 income tax.

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

97            1. The business;

98            2. The assets of the business; or

99            3. The stock of goods of the business.

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

HB 907

2011

113 The Department of Legal Affairs may seek an injunction at the  
114 request of the department to prevent further business activity  
115 of a taxpayer who fails to file a final return and make payment  
116 of the taxes associated with the operation of the business until  
117 such taxes ~~tax, interest, or penalties~~ are paid. A temporary  
118 injunction enjoining further business activity may be granted by  
119 a circuit court with jurisdiction over the taxpayer if the  
120 department has provided at least 20 days' prior written notice  
121 to the taxpayer ~~without notice~~. The written notice may be  
122 provided to the taxpayer before the filing of the lawsuit  
123 seeking the injunction.

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

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

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

HB 907

2011

141 and

142 b. There were no insiders in common between the transferor  
143 and the transferee at the time of the transfer; or ~~and~~

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

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

163 (c) A transferee who is liable for unpaid tax of a  
164 transferor and who fails to pay the taxes due within 60 days  
165 after written notice from the department may not engage in any  
166 business in the state until the taxes are paid unless an action  
167 is filed pursuant to subsection (7). If an action is timely  
168 filed, the transferee may continue to engage in business until a

HB 907

2011

169 final determination is entered against the transferee, although  
170 the court may, during the pendency of the action, require the  
171 transferee to post a bond or other security if the department  
172 establishes that it is likely to prevail and the collection of  
173 the unpaid tax would be jeopardized by delay ~~acquires the~~  
174 ~~business or stock of goods and fails to pay the taxes, interest,~~  
175 ~~or penalties due may not engage in any business in the state~~  
176 ~~until the taxes, interest, or penalties are paid.~~ The Department  
177 of Legal Affairs may seek an injunction at the request of the  
178 department to prevent further business activity of a transferee  
179 who is liable for unpaid tax of a transferor and who fails to  
180 pay or cause to be paid the transferee's maximum liability for  
181 such tax due until such maximum liability for the tax is,  
182 ~~interest, or penalties are paid.~~ A temporary injunction  
183 enjoining further business activity may be granted by a circuit  
184 court if the department has provided at least 20 days' prior  
185 written notice to the taxpayer without notice. The written  
186 notice may be provided to the taxpayer before the filing of the  
187 lawsuit seeking the injunction.

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

196 (6) The maximum liability of a transferee pursuant to this

HB 907

2011

197 section is equal to the fair market value of the business,  
198 assets of the business, or stock of goods ~~property~~ transferred  
199 to the transferee or the total purchase price paid by the  
200 transferee for the business, assets of the business, or stock of  
201 goods, whichever is greater.

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

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

207 1. Liens or liabilities owed to insiders.

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

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

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

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

218 Section 2. Sections 202.31 and 212.10, Florida Statutes,  
219 are repealed.

220 Section 3. This act shall take effect July 1, 2011.