

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

CS/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 discrete 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

CS/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.

CS/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.

CS/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;

CS/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 may charge a fee for
151 the cost of the audit if it has not issued a notice of intent to
152 audit by the time the request for the audit is received.

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

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

CS/HB 907

2011

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

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

195 (6) The maximum liability of a transferee pursuant to this
196 section is equal to the fair market value of the business,

CS/HB 907

2011

197 assets of the business, or stock of goods ~~property~~ transferred
198 to the transferee or the total purchase price paid by the
199 transferee for the business, assets of the business, or stock of
200 goods, whichever is 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.

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 or stock of goods pursuant to an involuntary
214 transfer.

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

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

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