

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

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is being asserted pursuant to s. 213.758, F.S.; repealing s. 202.31, F.S., relating to the tax liability and criminal liability of dealers of communications services who make certain transfers related to a communications services business; repealing s. 212.10, F.S., relating to a dealer's tax liability and criminal liability for sales tax when certain transfers of a business occur; providing an effective date.

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

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

213.758 Transfer of tax liabilities.—

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

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

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

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57 institution as defined in s. 655.005.

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

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

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

69 2. That results from an eminent domain or condemnation
70 action;

71 3. Pursuant to chapter 61, chapter 702, or the United
72 States Bankruptcy Code;

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

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

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

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

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

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

1. The business;
2. The assets of the business; or
3. The stock of goods of the business.

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

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113 may seek an injunction at the request of the department to
114 prevent further business activity of a taxpayer who fails to
115 file a final return and make payment of the taxes associated
116 with the operation of the business until such taxes ~~tax,~~
117 ~~interest, or penalties~~ are paid. A temporary injunction
118 enjoining further business activity shall ~~may~~ be granted by a
119 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.~~

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

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

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

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

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

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

161 (c) ~~A transferee who acquires the business or stock of~~
162 ~~goods and fails to pay the taxes, interest, or penalties due may~~
163 ~~not engage in any business in the state until the taxes,~~
164 ~~interest, or penalties are paid.~~ The Department of Legal Affairs
165 may seek an injunction at the request of the department to
166 prevent further business activity of a transferee who is liable
167 for unpaid tax of a transferor and who fails to pay or cause to
168 be paid the transferee's maximum liability for such tax due

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169 until such maximum liability for the tax ~~is, interest, or~~
170 ~~penalties are~~ paid. A temporary injunction enjoining further
171 business activity shall ~~may~~ be granted by a circuit court with
172 jurisdiction over the transferee if: ~~without notice.~~

173 1. The assessment against the transferee is final and
174 either:

175 a. The time for filing a contest under s. 72.011 has
176 expired; or

177 b. Any contest filed pursuant to s. 72.011 resulted in a
178 final and nonappealable judgment sustaining any part of the
179 assessment; and

180 2. The department has provided at least 20 days' prior
181 written notice to the transferee of its intention to seek an
182 injunction.

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

191 (6) The maximum liability of a transferee pursuant to this
192 section is equal to the fair market value of the business,
193 assets of the business, or stock of goods of the business
194 ~~property~~ transferred to the transferee or the total purchase
195 price paid by the transferee for the business, assets of the
196 business, or stock of goods of the business, whichever is

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greater.

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

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

1. Liens or liabilities owed to insiders.

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

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

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

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

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

213.053 Confidentiality and information sharing.—

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

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

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

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