

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; excluding certain transferees  
27      from tax liability when the transfer consists only of  
28      specified assets; amending s. 213.053, F.S.; authorizing

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the Department of Revenue to provide certain tax information to a transferee against whom tax liability 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

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57 as defined in s. 655.005 and any person who controls, is  
58 controlled by, or is under common control with a financial  
59 institution as defined in s. 655.005.

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

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

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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 chapter  
88 220, the corporate income tax code.

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 of the  
92 business, and includes, but is not limited to, assigning,  
93 conveying, demising, gifting, granting, or selling, other than  
94 to customers in the ordinary course of business, to a transferee  
95 or to a group of transferees who are acting in concert. A  
96 business is considered transferred when there is a transfer of  
97 more than 50 percent of:

98            1. The business;

99            2. The assets of the business; or

100           3. The stock of goods of the business.

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

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

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

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141 and

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

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 of the business to pay the tax ~~taxes, interest, or~~  
156 ~~penalties~~ owed to the state by the transferor taxpayer arising  
157 from the operation of the business. The transferee shall pay the  
158 withheld consideration to the state within 30 days after the  
159 date of the transfer. If the consideration withheld is less than  
160 the transferor's liability, the transferor remains liable for  
161 the deficiency.

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

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

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

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

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

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

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

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

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197 business, or stock of goods of the business, whichever is  
198 greater.

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

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

204 1. Liens or liabilities owed to insiders.

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

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

210 (8) This section does not impose liability on a transferee  
211 of a business, assets of a business, or stock of goods of a  
212 business when:

213 (a) The transfer is pursuant to an involuntary transfer;  
214 or

215 (b) The transferee is not an insider, and the asset  
216 transferred consists solely of a one- to four-family residential  
217 real property and furnishings and fixtures therein; vacant real  
218 property; or owner-occupied commercial real property; and, in  
219 each case, is not accompanied by a transfer of other assets of  
220 the business.

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



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

226           213.053 Confidentiality and information sharing.—

227           (17) The department may provide to the person against whom  
228 transferee liability is being asserted pursuant to s. 213.758 ~~s.~~  
229 ~~212.10(1)~~ information relating to the basis of the claim.

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

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

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