

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

29 the Department of Revenue to provide certain tax  
30 information to a transferee against whom tax liability is  
31 being asserted pursuant to s. 213.758, F.S.; repealing s.  
32 202.31, F.S., relating to the tax liability and criminal  
33 liability of dealers of communications services who make  
34 certain transfers related to a communications services  
35 business; repealing s. 212.10, F.S., relating to a  
36 dealer's tax liability and criminal liability for sales  
37 tax when certain transfers of a business occur; providing  
38 an effective date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Section 213.758, Florida Statutes, is amended  
43 to read:

44 213.758 Transfer of tax liabilities.—

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

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

56 (b) "Financial institution" means a financial institution

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:

61 1. Any person included within the meaning of insider as  
62 used in s. 726.102(7); or

63 2. A manager of, a managing member of, or a person who  
64 controls a transferor that is a limited liability company, or a  
65 relative as defined in s. 726.102(11) of any such persons.

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

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

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

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

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

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

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

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

113 ~~business. A taxpayer who fails to file a final return and make~~  
114 ~~payment may not engage in any business in this state until the~~  
115 ~~final return has been filed and all taxes, interest, or~~  
116 ~~penalties due have been paid.~~ The Department of Legal Affairs  
117 may seek an injunction at the request of the department to  
118 prevent further business activity of a taxpayer who fails to  
119 file a final return and make payment of the taxes associated  
120 with the operation of the business until such taxes tax,  
121 ~~interest, or penalties~~ are paid. A temporary injunction  
122 enjoining further business activity shall ~~may~~ be granted by a  
123 circuit court if the department has provided at least 20 days'  
124 prior written notice 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

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 if:  
175 ~~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.

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 when:

215 (a) The transfer is pursuant to an involuntary transfer;  
216 or

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

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



CS/CS/CS/HB 907, Engrossed 1

2011

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

228           213.053 Confidentiality and information sharing.—

229           (17) The department may provide to the person against whom  
230 transferee liability is being asserted pursuant to s. 213.758 ~~s.~~  
231 ~~212.10(1)~~ information relating to the basis of the claim.

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

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

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