

By Senator Altman

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1 A bill to be entitled
2 An act relating to the transfer of tax liabilities;
3 amending s. 213.758, F.S.; revising definitions;
4 defining the terms "business," "financial
5 institution," "insider," "stock of goods," and "tax";
6 requiring that a circuit court having jurisdiction
7 over a taxpayer who fails to file a final tax return
8 and to make tax payment for a business provide at
9 least 20 days' written notice before issuing a
10 temporary injunction enjoining further business
11 activity; specifying additional conditions for a
12 transferee of a business, assets of the business, or
13 stock of goods to establish that the business has no
14 tax liability arising from the transfer; requiring the
15 Department of Revenue to complete certain audits
16 within a specified time in certain circumstances;
17 requiring the Department of Revenue to charge a fee
18 for conducting an audit of a transferor's books and
19 records; prohibiting a transferee who is liable for
20 unpaid taxes of a transferor and who fails to pay
21 taxes within a specified time from engaging in any
22 business in the state; providing that a prohibition on
23 the conduct of business by a transferee is stayed
24 during a legal challenge to a determination of
25 transferee liability by the department; authorizing
26 the court to require the transferee to post a bond or
27 other security in certain circumstances; authorizing
28 the Department of Legal Affairs to require a
29 transferee to pay maximum liability for any tax due in

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30 certain circumstances; authorizing a circuit court
31 having jurisdiction over the taxpayer to issue to a
32 transferee a temporary injunction enjoining further
33 business upon at least 20 days' written notice to the
34 transferee; providing criteria for the determination
35 of the fair market value and purchase price of a
36 business, assets of the business, or a stock of goods;
37 deleting the authority of the Department of Revenue to
38 adopt rules relating to transferee liability; amending
39 s. 213.053, F.S.; conforming a cross-reference;
40 repealing s. 202.31, F.S., relating to the payment of
41 taxes of a business of a dealer of communications
42 services which has been sold; repealing s. 212.10,
43 F.S., relating to the payment of taxes of a business
44 that is a sales tax dealer, which business or stock of
45 goods of the business has been sold; providing an
46 effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Section 213.758, Florida Statutes, is amended to
51 read:

52 213.758 Transfer of tax liabilities.—

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

54 (a) "Business" means any activity regularly engaged in by
55 any person, or caused to be engaged in by him or her, with the
56 object of private or public gain, benefit, or advantage, either
57 direct or indirect. The term does not include an occasional or
58 isolated sale or transaction involving property or services by a

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59 person who does not hold himself or herself out as engaged in
60 business. A discreet division or portion of a business is not
61 considered to be a separate business if it is not a separate
62 legal entity, but shall be aggregated with all divisions or
63 portions to constitute a single business.

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

68 (c) "Insider" means a person as defined in s. 726.102 or a
69 member, manager, or managing member of a limited liability
70 company.

71 (d) (a) "Involuntary transfer" means a transfer of a
72 business, the assets of the business, or the stock of goods made
73 without the consent of the transferor, including, but not
74 limited to, a transfer:

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

78 2. That results from an eminent domain or condemnation
79 action;

80 3. Pursuant to chapter 61, chapter 702, or the United
81 States Bankruptcy Code;

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

85 5. To a third party to the extent that the proceeds are
86 used to satisfy the transferor's indebtedness to a financial
87 institution ~~as defined in s. 655.005.~~ If the third party

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receives assets worth more than the indebtedness, the transfer 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 of Revenue 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, the assets of the business, or the stock of goods. The term, 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 transfer of more than 50 percent of:

1. All of a business;
2. All of the assets of the business; or
3. All of the stock of goods,

shall be considered a transfer 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 to a transferee, must file a final return for the business

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and make full payment of all taxes arising from the operation of the 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 may seek an injunction at the request of the department to prevent further business activity of a taxpayer who fails to file a final return and make payment of the taxes until the taxes such tax, ~~interest, or penalties~~ are paid. A circuit court having jurisdiction over the taxpayer may issue the temporary injunction enjoining further business activity upon at least 20 days' written notice to the taxpayer ~~may be granted by a court without notice.~~

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

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

1. The transferor provides a receipt or certificate of compliance from the department to the transferee showing that the transferor has not received a notice of audit, that the

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transferor has filed all required tax returns and has paid all ~~is not liable for taxes arising, interest, or penalties~~ from the operation of the business identified on the returns filed, and that the transferor and the transferee did not have any common insiders at the time of the transfer; or ~~and~~

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

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

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

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175 final determination is entered. However, during the pendency of
176 the action, the court may require the transferee to post a bond
177 or other security if the department establishes that the
178 department is likely to prevail and the collection of the unpaid
179 tax may be jeopardized by the delay ~~acquires the business or~~
180 ~~stock of goods and fails to pay the taxes, interest, or~~
181 ~~penalties due may not engage in any business in the state until~~
182 ~~the taxes, interest, or penalties are paid.~~ The Department of
183 Legal Affairs may seek an injunction at the request of the
184 department to prevent further business activity by a transferee
185 who is liable for unpaid tax of a transferor and who fails to
186 pay or cause to be paid the transferee's maximum liability for
187 such tax due until the ~~such tax is, interest, or penalties are~~
188 paid. A circuit court having jurisdiction over the taxpayer may
189 issue the temporary injunction enjoining further business
190 activity upon at least 20 days' written notice to the transferee
191 ~~may be granted by a court without notice.~~

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

199 (6) The maximum liability of a transferee pursuant to this
200 section is equal to the fair market value of the business,
201 assets of the business, or stock of goods ~~property~~ transferred
202 to the transferee, or the total purchase price paid by the
203 transferee for the business, assets of the business, or stock of

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goods, whichever is greater. Fair market value shall be determined net of any liens or liabilities, excepting a lien or liability owed to an insider or a lien or liability assumed by the transferee. The total purchase price shall be determined net of liens and liabilities against the assets excepting a lien or liability owed to an insider or a lien or liability assumed by a transferee.

(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 or stock of goods 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.