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1 A bill to be entitled
2 An act relating to taxation; directing the Department of
3 Revenue to develop and implement an amnesty program for
4 taxpayers subject to the state and local taxes imposed by
5 chapters 125, 175, 185, 198, 199, 201, 202, 203, 206, 211,
6 212, 220, 221, 252, 336, 376, 403, 624, 627, 629, and 681,
7 F.S.; and required to be paid to the Department of
8 Revenue; providing time periods; providing program
9 guidelines; providing for eligible participants; providing
10 for waiver of penalties and interest under specified
11 circumstances; providing for emergency rules; providing an
12 appropriation; amending s. 213.053, F.S.; providing that
13 the department may release confidential taxpayer
14 information relating to a corporation having an
15 outstanding tax warrant to the Department of Business and
16 Professional Regulation; authorizing the department to
17 publish a list of taxpayers against whom it has filed a
18 warrant or judgment lien certificate; requiring the
19 department to update the list at least monthly;
20 authorizing the department to adopt rules; authorizing the
21 department to provide confidential taxpayer information
22 relating to collections from taxpayers against whom it has
23 taken a collection action; amending s. 213.50, F.S.;
24 authorizing the Department of Business and Professional
25 Regulation to revoke or deny the renewal of a license for
26 a hotel or restaurant having an outstanding tax warrant
27 for a certain period of time; creating s. 213.692, F.S.;
28 authorizing the department to revoke all certificates of

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29 registration, permits, or licenses issued to a taxpayer
30 against whose property the department has filed a warrant
31 or tax lien; requiring the scheduling of an informal
32 conference before revocation of the certificates of
33 registration, permits, or licenses; prohibiting the
34 department from issuing a certificate of registration,
35 permit, or license to a taxpayer whose certificate of
36 registration, permit, or license has been revoked;
37 providing exceptions; requiring security as a condition of
38 issuing a new certificate of registration to a person
39 whose certificate of registration, permit, or license has
40 been revoked after the filing of a warrant or tax lien
41 certificate; authorizing the department to adopt rules,
42 including emergency rules; creating s. 213.758, F.S.;
43 defining terms; providing for the transfer of tax
44 liabilities to the transferee of a business or a stock of
45 goods under certain circumstances; providing exceptions;
46 requiring a taxpayer who quits a business to file a final
47 tax return; authorizing the Department of Legal Affairs to
48 seek injunctions to prevent business activities until
49 taxes are paid; requiring the transferor of a business or
50 stock of goods to file a final tax return and make a full
51 tax payment after a transfer; authorizing a transferee of
52 a business or stock of goods to withhold a portion of the
53 consideration for the transfer for the payment of certain
54 taxes; authorizing the Department of Legal Affairs to seek
55 an injunction to prevent business activities by a
56 transferee until the taxes are paid; providing that the

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57 | transferees are jointly and severally liable with the
 58 | transferor for the payment of taxes, interest, or
 59 | penalties under certain circumstances; limiting the
 60 | transferee's liability to the value or purchase price of
 61 | the transferred property; specifying a time period within
 62 | which a transferee may file certain actions; authorizing
 63 | the department to adopt rules; authorizing 25 full-time
 64 | equivalent positions and making an appropriation for the
 65 | purpose of conducting audits and tax collection services
 66 | in the Department of Revenue; providing an effective date.

67 |

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

69 | Section 1. (1) No later than July 1, 2010, the Department
 70 | of Revenue shall develop and implement an amnesty program for
 71 | taxpayers subject to the state and local taxes imposed by
 72 | chapters 125, 175, 185, 198, 199, 201, 202, 203, 206, 211, 212,
 73 | 220, 221, 252, 336, 376, 403, 624, 627, 629, and 681, Florida
 74 | Statutes.

75 | (2) The amnesty program shall be a one-time opportunity
 76 | for eligible taxpayers to satisfy their tax liabilities under
 77 | the revenue laws of this state and thereby avoid criminal
 78 | prosecution, penalties, and interest as provided in subsections
 79 | (5), (6), and (7). Any taxpayer that has entered into a
 80 | settlement of liability for state or local option taxes before
 81 | July 1, 2010, whether or not full and complete payment has been
 82 | made of the settlement amount, shall not be eligible to
 83 | participate in the amnesty program.

84 | (3) The amnesty program shall be in effect for a 3-month

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85 period beginning on July 1, 2010, and ending on September 30,
86 2010. The amnesty program shall apply only to tax liabilities
87 due prior to July 1, 2010. In order to participate in the
88 amnesty program, eligible taxpayers must file the forms and
89 other documentation specified by the Department of Revenue,
90 including, but not limited to, returns and amended returns, must
91 make full payment of tax due, and must make payment of the
92 interest due as provided in subsections (5) and (6).

93 (4) The administrative collection processing fee imposed
94 pursuant to section 213.24, Florida Statutes, shall be
95 calculated on the tax, penalty and interest due before the
96 reductions allowed by the amnesty program.

97 (5) A taxpayer may participate in the amnesty program
98 whether or not the taxpayer is under audit, inquiry,
99 examination, or civil investigation initiated by the Department
100 of Revenue, regardless of whether the amount due is included in
101 a proposed assessment or an assessment, bill, notice, or demand
102 for payment issued by the Department of Revenue, and without
103 regard to whether the amount due is subject to a pending
104 administrative or judicial proceeding. If any of the
105 circumstances set forth in this subsection apply, the taxpayer
106 shall be required to pay the full amount of the tax due and 75
107 percent of the amount of interest due. When the department has
108 issued a notice of intent to conduct an audit to a taxpayer but
109 has not commenced the audit, the taxpayer may apply to the
110 department during the amnesty program for approval to have the
111 audit converted to the certified audits program authorized by
112 section 213.285, Florida Statutes. When a taxpayer has been

113 approved during the amnesty program to have an audit converted
 114 to the certified audits program, payment of any liability
 115 determined as a result of this participation in the certified
 116 audits program must be made during the period the amnesty
 117 program is in effect. A taxpayer that is participating in the
 118 certified audits program authorized by section 213.285, Florida
 119 Statutes, shall be eligible for the interest and penalty
 120 compromises authorized by either the amnesty program or the
 121 certified audits program, but not both.

122 (6) If the circumstances set forth in subsection (4) do
 123 not apply and the initial contact with the Department of Revenue
 124 is made by the taxpayer pursuant to the amnesty program, the
 125 taxpayer shall be required to pay the full amount of the tax due
 126 and 50 percent of the amount of interest due.

127 (7) No penalties shall be imposed on any tax paid pursuant
 128 to the amnesty program, and the Department of Revenue shall not
 129 initiate a criminal investigation against or refer for
 130 prosecution any taxpayer participating in the amnesty program
 131 with respect to the failure to timely pay the tax disclosed in
 132 the amnesty program.

133 (8) Participation in the amnesty program shall be
 134 conditioned upon the taxpayer's express waiver of rights to
 135 contest taxes being reported pursuant to the amnesty program. If
 136 the taxes reported pursuant to the amnesty program are the
 137 subject of a pending informal protest under section 213.21,
 138 Florida Statutes, or of administrative or judicial proceedings
 139 that have not become final as of the date payment of the taxes
 140 is made pursuant to the amnesty program, participation in the

141 amnesty program is conditioned upon the taxpayer's withdrawal of
 142 such informal protest or dismissal of such administrative or
 143 judicial proceeding. Participation in the amnesty program shall
 144 also be conditioned upon the taxpayer's express agreement to
 145 wave any right to claim a refund or to protest or initiate an
 146 administrative or judicial proceeding to review any denial of a
 147 refund claim for any refund of tax or interest paid under the
 148 amnesty program except as provided in this subsection. No refund
 149 may be made of any penalty or interest paid prior to July 1,
 150 2010. Any credit or refund of tax or interest paid as a result
 151 of participation in the amnesty program shall be strictly
 152 limited to amounts determined by the Department of Revenue to
 153 have been paid in error.

154 (9) A taxpayer under criminal investigation, indictment,
 155 information, or prosecution regarding a revenue law of this
 156 state shall not be eligible to participate in the amnesty
 157 program. A taxpayer that is under pre-trial intervention or a
 158 diversion program, probation, community control, or in a work
 159 camp, jail, state prison or another correctional system
 160 regarding a revenue law of this state shall not be eligible to
 161 participate in the amnesty program.

162 (10) With or without an audit, the Department of Revenue
 163 is authorized to issue a notice or demand for payment with
 164 respect to any tax or interest that it determines to be due with
 165 any return filed under the tax amnesty program, and such notice
 166 and demand shall be prima facie correct in any administrative,
 167 judicial, or quasi-judicial proceeding.

168 (11) The Department of Revenue may, on the basis of fraud,

169 misrepresentation, or mutual mistake of fact, rescind a grant of
 170 amnesty, including any amnesty granted as a result of
 171 participation in the certified audit program during the period
 172 the amnesty program is in effect. Any taxpayer that files under
 173 the amnesty program false or fraudulent returns, forms, or
 174 documentation or attempts in any manner to defeat or evade a tax
 175 is subject to applicable penalties and criminal prosecution.

176 (12) Any local option tax administered by a local
 177 government that imposed the tax pursuant to a statute permitting
 178 self-administration is excluded from the amnesty program unless
 179 the local government notifies the Department of Revenue by June
 180 1, 2010, that it chooses to participate in the amnesty program.

181 (13) The executive director of the Department of Revenue
 182 is authorized to adopt emergency rules under sections 120.536(1)
 183 and 120.54(4), Florida Statutes, to implement the amnesty
 184 program. Such rules may provide forms, procedures, terms,
 185 conditions, and methods of payment appropriate for fair and
 186 effective administration of the amnesty program and to ensure
 187 the taxpayer's ongoing commitment to proper remittance of taxes
 188 to the state. Notwithstanding any other law, the emergency rules
 189 shall remain in effect until the later of the date that is 6
 190 months after the date of adoption of the rule or the date of
 191 final resolution of all amnesty applications filed pursuant to
 192 this section.

193 Section 2. The sum of \$1,234,000 in non-recurring funds is
 194 appropriated from the General Revenue Fund to the Department of
 195 Revenue for the purpose of administering the amnesty program
 196 created by this act. Funds remaining unexpended or unencumbered

197 from this appropriation as of June 30, 2010, shall revert and be
 198 reappropriated for the same purpose in fiscal year 2010-2011.

199 Section 3. Effective July 1, 2010, subsection (8) of
 200 section 213.053, Florida Statutes, is amended, and subsections
 201 (19) and (20) are added to that section, to read:

202 213.053 Confidentiality and information sharing.—

203 (8) Notwithstanding any other provision of this section,
 204 the department may provide:

205 (d) Names, addresses, ~~and~~ sales tax registration
 206 information, and information relating to a hotel or restaurant
 207 having an outstanding tax warrant, notice of lien, or judgment
 208 lien certificate to the Division of Hotels and Restaurants of
 209 the Department of Business and Professional Regulation in the
 210 conduct of its official duties.

211
 212 Disclosure of information under this subsection shall be
 213 pursuant to a written agreement between the executive director
 214 and the agency. Such agencies, governmental or nongovernmental,
 215 shall be bound by the same requirements of confidentiality as
 216 the Department of Revenue. Breach of confidentiality is a
 217 misdemeanor of the first degree, punishable as provided by s.
 218 775.082 or s. 775.083.

219 (19) (a) The department may publish a list of taxpayers
 220 against whom it has filed a warrant, notice of lien, or judgment
 221 lien certificate. The list may include the name and address of
 222 each taxpayer; the amounts and types of delinquent taxes, fees
 223 or surcharges, penalties, or interest; and the employer
 224 identification number or other taxpayer identification number.

225 (b) The department shall update the list at least monthly
 226 to reflect payments for resolution of deficiencies and to
 227 otherwise add or remove taxpayers from the list.

228 (c) The department may adopt rules to administer this
 229 subsection.

230 (20) The department may disclose information relating to
 231 taxpayers against whom it has filed a warrant, notice of lien or
 232 judgment lien certificate. Such information includes the name
 233 and address of the taxpayer; the actions taken; the amounts and
 234 types of liabilities; and the amount of any collections made.

235 Section 4. Effective July 1, 2010, section 213.50, Florida
 236 Statutes, is amended to read:

237 213.50 Failure to comply; revocation of corporate charter
 238 or hotel or restaurant license; refusal to reinstate charter or
 239 license.-

240 (1) Any corporation of this state which has an outstanding
 241 tax warrant that has existed for more than 3 consecutive months
 242 is subject to the revocation of its charter as provided in s.
 243 607.1420.

244 (2) A request for reinstatement of a corporate charter may
 245 not be granted by the Division of Corporations of the Department
 246 of State if an outstanding tax warrant has existed for that
 247 corporation for more than 3 consecutive months.

248 (3) The Department of Business and Professional Regulation
 249 may revoke the hotel or restaurant license of a licenseholder if
 250 a tax warrant has been outstanding against the licenseholder for
 251 more than 3 months.

252 (4) The Department of Business and Professional Regulation
 253 may deny an application to renew the hotel or restaurant license
 254 of a licenseholder if a tax warrant has been outstanding against
 255 the licenseholder for more than 3 months.

256 Section 5. Effective July 1, 2010, section 213.692,
 257 Florida Statutes, is created to read:

258 213.692 Integrated enforcement authority.-

259 (1) If the department files a warrant, notice of lien, or
 260 judgment lien certificate against the property of a taxpayer,
 261 the department may also revoke all certificates of registration,
 262 permits, or licenses issued by the department to that taxpayer.

263 (a) Before the department may revoke the certificates of
 264 registration, permits, or licenses, the department must schedule
 265 an informal conference that the taxpayer is required to attend.
 266 At the conference, the taxpayer may present evidence regarding
 267 the department's intended action or enter into a compliance
 268 agreement. The department must provide written notice to the
 269 taxpayer of the department's intended action and the time, date,
 270 and place of the conference. The department shall issue an
 271 administrative complaint to revoke the certificates of
 272 registration, permits, or licenses if the taxpayer does not
 273 attend the conference, enter into a compliance agreement, or
 274 comply with the compliance agreement.

275 (b) The department may not issue a certificate of
 276 registration, permit, or license to a taxpayer whose certificate
 277 of registration, permit, or license has been revoked unless:

278 1. The outstanding liabilities of the taxpayer have been
 279 satisfied; or

280 2. The department enters into a written agreement with the
 281 taxpayer regarding any outstanding liabilities and, as part of
 282 such agreement, agrees to issue a certificate of registration,
 283 permit, or license.

284 (c) The department shall require a cash deposit, bond, or
 285 other security as a condition of issuing a new certificate of
 286 registration pursuant to the requirements of s. 212.14(4).

287 (2) If the department files a warrant or a judgment lien
 288 certificate in connection with a jeopardy assessment, the
 289 department must comply with the procedures in s. 213.732 before
 290 or in conjunction with those provided in this section.

291 (3) The department may adopt rules to administer this
 292 section.

293 Section 6. Effective July 1, 2010, the Department of
 294 Revenue is authorized to adopt emergency rules to administer s.
 295 213.692, Florida Statutes. The emergency rules shall remain in
 296 effect for 6 months after adoption and may be renewed during the
 297 pendency of procedures to adopt rules addressing the subject of
 298 the emergency rules.

299 Section 7. Section 213.758, Florida Statutes, is created
 300 to read:

301 213.758 Transfer of tax liabilities.—

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

303 (a) "Involuntary transfer" means a transfer of a business
 304 or stock of goods made without the consent of the transferor,
 305 including, but not limited to, a transfer:

306 1. That occurs due to the foreclosure of a security
 307 interest issued to a person who is not an insider as defined in

308 s. 726.102;
 309 2. That results from an eminent domain or condemnation
 310 action;
 311 3. Pursuant to chapter 61, chapter 702, or the United
 312 States Bankruptcy Code;
 313 4. To a financial institution, as defined in s. 655.005, if
 314 the transfer is made to satisfy the transferor's debt to the
 315 financial institution; or
 316 5. To a third party to the extent that the proceeds are
 317 used to satisfy the transferor's indebtedness to a financial
 318 institution as defined in s. 655.005. If the third party
 319 receives assets worth more than the indebtedness, the transfer
 320 of the excess may not be deemed an involuntary transfer.
 321 (b) "Transfer" means every mode, direct or indirect, with
 322 or without consideration, of disposing of or parting with a
 323 business or stock of goods, and includes, but is not limited to,
 324 assigning, conveying, demising, gifting, granting, or selling.
 325 (2) A taxpayer who is liable for any tax, interest,
 326 penalty, surcharge, or fee administered by the department
 327 pursuant to chapter 443 or described in s. 72.011(1), excluding
 328 corporate income tax, and who quits a business without the
 329 benefit of a purchaser, successor, or assignee, or without
 330 transferring the business or stock of goods to a transferee,
 331 must file a final return and make full payment within 15 days
 332 after quitting the business. A taxpayer who fails to file a
 333 final return and make payment may not engage in any business in
 334 this state until the final return has been filed and all taxes,
 335 interest, or penalties due have been paid. The Department of

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336 Legal Affairs may seek an injunction at the request of the
337 department to prevent further business activity until such tax,
338 interest, or penalties are paid. A temporary injunction
339 enjoining further business activity may be granted by a court
340 without notice.

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

347 (4) (a) A transferee, or a group of transferees acting in
348 concert, of more than 50 percent of a business or stock of goods
349 is liable for any tax, interest, or penalties owed by the
350 transferor unless:

351 1. The transferor provides a receipt or certificate from
352 the department to the transferee showing that the transferor is
353 not liable for taxes, interest, or penalties from the operation
354 of the business; and

355 2. The department finds that the transferor is not liable
356 for taxes, interest, or penalties after an audit of the
357 transferor's books and records. The audit may be requested by
358 the transferee or the transferor. The department may charge a
359 fee for the cost of the audit if it has not issued a notice of
360 intent to audit by the time the request for the audit is
361 received.

362 (b) A transferee may withhold a portion of the
363 consideration for a business or stock of goods to pay the taxes,

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364 interest, or penalties owed to the state from the operation of
365 the business. The transferee shall pay the withheld
366 consideration to the state within 30 days after the date of the
367 transfer. If the consideration withheld is less than the
368 transferor's liability, the transferor remains liable for the
369 deficiency.

370 (c) A transferee who acquires the business or stock of
371 goods and fails to pay the taxes, interest, or penalties due,
372 may not engage in any business in the state until the taxes,
373 interest, or penalties are paid. The Department of Legal Affairs
374 may seek an injunction at the request of the department to
375 prevent further business activity until such tax, interest, or
376 penalties are paid. A temporary injunction enjoining further
377 business activity may be granted by a court without notice.

378 (5) The transferee, or transferees acting in concert, of
379 more than 50 percent of a business or stock of goods are jointly
380 and severally liable with the transferor for the payment of the
381 taxes, interest, or penalties owed to the state from the
382 operation of the business by the transferor.

383 (6) The maximum liability of a transferee pursuant to this
384 section is equal to the fair market value of the property
385 transferred or the total purchase price, whichever is greater.

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

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

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

394 Section 8. For Fiscal Year 2010-2011, 25 full-time
395 equivalent positions, with associated salary rate of \$817,448,
396 are authorized. Also for Fiscal Year 2010-2011, from the
397 General Revenue Fund, the sums of \$1,445,100 in recurring funds
398 and \$96,925 in nonrecurring funds are hereby appropriated for
399 the purpose of conducting audits and tax collection services in
400 the Department of Revenue.

401 Section 9. Except as otherwise specifically provided in
402 this bill, this bill shall take effect upon becoming a law..