

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, notice of lien, or judgment lien certificate;
19 requiring the department to update the list at least
20 monthly; authorizing the department to adopt rules;
21 authorizing the department to provide confidential
22 taxpayer information relating to collections from
23 taxpayers against whom it has taken a collection action;
24 amending s. 213.50, F.S.; authorizing the Division of
25 Hotels and Restaurants of the Department of Business and
26 Professional Regulation to revoke or deny the renewal of a
27 license to operate a public lodging establishment or
28 public food service establishment under certain

29 | circumstances; creating s. 213.692, F.S.; authorizing the
30 | Department of Revenue to revoke all certificates of
31 | registration, permits, or licenses issued to a taxpayer
32 | against whose property the department has filed a warrant,
33 | notice of lien, or judgment lien certificate; requiring
34 | the scheduling of an informal conference before revocation
35 | of the certificates of registration, permits, or licenses;
36 | prohibiting the Department of Revenue from issuing a
37 | certificate of registration, permit, or license to a
38 | taxpayer whose certificate of registration, permit, or
39 | license has been revoked; providing exceptions; requiring
40 | security as a condition of issuing a new certificate of
41 | registration to a person whose certificate of
42 | registration, permit, or license has been revoked after
43 | the filing of a warrant, notice of lien, or judgment lien
44 | certificate; authorizing the department to adopt rules,
45 | including emergency rules; creating s. 213.758, F.S.;;
46 | defining terms; providing for the transfer of tax
47 | liabilities to the transferee of a business or a stock of
48 | goods under certain circumstances; providing exceptions;
49 | requiring a taxpayer who quits a business to file a final
50 | tax return; authorizing the Department of Legal Affairs to
51 | seek injunctions to prevent business activities until
52 | taxes are paid; requiring the transferor of a business or
53 | stock of goods to file a final tax return and make a full
54 | tax payment after a transfer; authorizing a transferee of
55 | a business or stock of goods to withhold a portion of the
56 | consideration for the transfer for the payment of certain

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57 | taxes; authorizing the Department of Legal Affairs to seek
58 | an injunction to prevent business activities by a
59 | transferee until the taxes are paid; providing that the
60 | transferees are jointly and severally liable with the
61 | transferor for the payment of taxes, interest, or
62 | penalties under certain circumstances; limiting the
63 | transferee's liability to the value or purchase price of
64 | the transferred property; specifying a time period within
65 | which a transferee may file certain actions; providing no
66 | liability to a transferee for a an involuntary transfer;
67 | authorizing the Department of Revenue to adopt rules;
68 | authorizing full-time equivalent positions and providing
69 | an appropriation for the purpose of conducting audits and
70 | tax collection services in the Department of Revenue;
71 | providing an effective date.

72 |
73 | Be It Enacted by the Legislature of the State of Florida:

74 |
75 | Section 1. (1) No later than July 1, 2010, the Department
76 | of Revenue shall develop and implement an amnesty program for
77 | taxpayers subject to the state and local taxes imposed by
78 | chapters 125, 175, 185, 198, 199, 201, 202, 203, 206, 211, 212,
79 | 220, 221, 252, 336, 376, 403, 624, 627, 629, and 681, Florida
80 | Statutes.

81 | (2) The amnesty program shall be a one-time opportunity
82 | for eligible taxpayers to satisfy their tax liabilities under
83 | the revenue laws of this state and thereby avoid criminal
84 | prosecution, penalties, and interest as provided in subsections

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85 (5), (6), and (7). Any taxpayer that has entered into a
86 settlement of liability for state or local option taxes before
87 July 1, 2010, whether or not full and complete payment of the
88 settlement amount has been made, is not eligible to participate
89 in the amnesty program.

90 (3) The amnesty program shall be in effect for a 3-month
91 period beginning on July 1, 2010, and ending on September 30,
92 2010. The amnesty program shall apply only to tax liabilities
93 due prior to July 1, 2010. In order to participate in the
94 amnesty program, eligible taxpayers must file the forms and
95 other documentation specified by the Department of Revenue,
96 including, but not limited to, returns and amended returns, and
97 must make full payment of tax due, the interest due as provided
98 in subsections (5) and (6), and the administrative collection
99 processing fee imposed pursuant to s. 213.24, Florida Statutes.

100 (4) The administrative collection processing fee imposed
101 pursuant to s. 213.24, Florida Statutes, shall be calculated on
102 the tax, penalty, and interest due before the reductions allowed
103 by the amnesty program.

104 (5) A taxpayer may participate in the amnesty program
105 whether or not the taxpayer is under audit, inquiry,
106 examination, or civil investigation initiated by the Department
107 of Revenue, regardless of whether the amount due is included in
108 a proposed assessment or an assessment, bill, notice, or demand
109 for payment issued by the Department of Revenue, and without
110 regard to whether the amount due is subject to a pending
111 administrative or judicial proceeding. If any of the
112 circumstances set forth in this subsection apply, the taxpayer

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113 shall pay the full amount of the tax due and 75 percent of the
114 amount of interest due. When the department has issued a notice
115 of intent to conduct an audit to a taxpayer but has not
116 commenced the audit, the taxpayer may apply to the department
117 during the amnesty program for approval to have the audit
118 converted to the certified audits program authorized by s.
119 213.285, Florida Statutes. When a taxpayer has been approved
120 during the amnesty program to have an audit converted to the
121 certified audits program, payment of any liability determined as
122 a result of this participation in the certified audits program
123 must be made during the period the amnesty program is in effect.
124 A taxpayer that is participating in the certified audits program
125 authorized by s. 213.285, Florida Statutes, is eligible for the
126 interest and penalty compromises authorized by the amnesty
127 program or the certified audits program, but not both.

128 (6) If the circumstances set forth in subsection (5) do
129 not apply and the initial contact with the Department of Revenue
130 is made by the taxpayer pursuant to the amnesty program, the
131 taxpayer shall pay the full amount of the tax due and 50 percent
132 of the amount of interest due.

133 (7) Penalties may not be imposed on any tax paid pursuant
134 to the amnesty program, and the Department of Revenue may not
135 initiate a criminal investigation against or refer for
136 prosecution any taxpayer participating in the amnesty program
137 with respect to the failure to timely pay the tax disclosed in
138 the amnesty program.

139 (8) Participation in the amnesty program is conditioned
140 upon the taxpayer's express waiver of rights to contest taxes

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141 being reported pursuant to the amnesty program. If the taxes
142 reported pursuant to the amnesty program are the subject of a
143 pending informal protest under s. 213.21, Florida Statutes, or
144 of administrative or judicial proceedings that have not become
145 final as of the date payment of the taxes is made pursuant to
146 the amnesty program, participation in the amnesty program is
147 conditioned upon the taxpayer's withdrawal of such informal
148 protest or dismissal of such administrative or judicial
149 proceeding. Participation in the amnesty program is also
150 conditioned upon the taxpayer's express agreement to waive any
151 right to claim a refund or to protest or initiate an
152 administrative or judicial proceeding to review any denial of a
153 refund claim for any refund of tax or interest paid under the
154 amnesty program except as provided in this subsection. A refund
155 of any penalty or interest paid prior to July 1, 2010, may not
156 be made. Any credit or refund of tax or interest paid as a
157 result of participation in the amnesty program is strictly
158 limited to amounts determined by the Department of Revenue to
159 have been paid in error.

160 (9) A taxpayer under criminal investigation, indictment,
161 information, or prosecution regarding a revenue law of this
162 state is not eligible to participate in the amnesty program. A
163 taxpayer under pretrial intervention or a diversion program,
164 probation, or community control or in a work camp, jail, state
165 prison, or another correctional system regarding a revenue law
166 of this state is not eligible to participate in the amnesty
167 program.

168 (10) With or without an audit, the Department of Revenue

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169 may issue a notice or demand for payment with respect to any tax
170 or interest that the department determines to be due with any
171 return filed under the tax amnesty program, and such notice and
172 demand is prima facie correct in any administrative, judicial,
173 or quasi-judicial proceeding.

174 (11) The Department of Revenue may, on the basis of fraud,
175 misrepresentation, or mutual mistake of fact, rescind a grant of
176 amnesty, including any amnesty granted as a result of
177 participation in the certified audit program during the period
178 the amnesty program is in effect. Any taxpayer that files under
179 the amnesty program false or fraudulent returns, forms, or
180 documentation or attempts in any manner to defeat or evade a tax
181 is subject to applicable penalties and criminal prosecution.

182 (12) Any local option tax administered by a local
183 government that imposed the tax pursuant to a statute permitting
184 self-administration is excluded from the amnesty program unless
185 the local government notifies the Department of Revenue by June
186 1, 2010, that it chooses to participate in the amnesty program.

187 (13) The executive director of the Department of Revenue
188 may adopt emergency rules under ss. 120.536(1) and 120.54(4),
189 Florida Statutes, to implement the amnesty program. Such rules
190 may provide forms, procedures, terms, conditions, and methods of
191 payment appropriate for fair and effective administration of the
192 amnesty program and to ensure taxpayers' ongoing commitment to
193 proper remittance of taxes to the state. Notwithstanding any
194 other law, the emergency rules shall remain in effect until 6
195 months after the date of adoption of the rule or the date of
196 final resolution of all amnesty applications filed pursuant to

197 this section, whichever is later.

198 Section 2. The sum of \$1,234,000 in nonrecurring funds is
 199 appropriated from the General Revenue Fund to the Department of
 200 Revenue for the purpose of administering the amnesty program
 201 created by this act. Funds remaining unexpended or unencumbered
 202 from this appropriation as of June 30, 2010, shall revert and be
 203 reappropriated for the same purpose in fiscal year 2010-2011.

204 Section 3. Effective July 1, 2010, paragraph (d) of
 205 subsection (8) of section 213.053, Florida Statutes, is amended,
 206 and subsections (20) and (21) are added to that section, to
 207 read:

208 213.053 Confidentiality and information sharing.—

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

211 (d) Names, addresses, ~~and~~ sales tax registration
 212 information, and information relating to a public lodging
 213 establishment or a public food service establishment having an
 214 outstanding tax warrant, notice of lien, or judgment lien
 215 certificate to the Division of Hotels and Restaurants of the
 216 Department of Business and Professional Regulation in the
 217 conduct of its official duties.

218
 219 Disclosure of information under this subsection shall be
 220 pursuant to a written agreement between the executive director
 221 and the agency. Such agencies, governmental or nongovernmental,
 222 shall be bound by the same requirements of confidentiality as
 223 the Department of Revenue. Breach of confidentiality is a
 224 misdemeanor of the first degree, punishable as provided by s.

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225 775.082 or s. 775.083.

226 (20) (a) The department may publish a list of taxpayers
 227 against whom the department has filed a warrant, notice of lien,
 228 or judgment lien certificate. The list may include the name and
 229 address of each taxpayer; the amounts and types of delinquent
 230 taxes, fees, or surcharges, penalties, or interest; and the
 231 employer identification number or other taxpayer identification
 232 number.

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

236 (c) The department may adopt rules to administer this
 237 subsection.

238 (21) The department may disclose information relating to
 239 taxpayers against whom the department has filed a warrant,
 240 notice of lien, or judgment lien certificate. Such information
 241 includes the name and address of the taxpayer, the actions
 242 taken, the amounts and types of liabilities, and the amount of
 243 any collections made.

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

246 213.50 Failure to comply; revocation of corporate charter
 247 or license to operate a public lodging establishment or public
 248 food service establishment; refusal to reinstate charter or
 249 license.-

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

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253 | 607.1420.

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

258 | (3) (a) The Division of Hotels and Restaurants of the
259 | Department of Business and Professional Regulation may revoke a
260 | license to operate a public lodging establishment or a public
261 | food service establishment if a tax warrant has been outstanding
262 | against the licenseholder for more than 3 months.

263 | (b) The division may deny an application to renew a
264 | license to operate a public lodging establishment or a public
265 | food service establishment if a tax warrant has been outstanding
266 | against the licenseholder for more than 3 months.

267 | Section 5. Effective July 1, 2010, section 213.692,
268 | Florida Statutes, is created to read:

269 | 213.692 Integrated enforcement authority.-

270 | (1) If the department files a warrant, notice of lien, or
271 | judgment lien certificate against the property of a taxpayer,
272 | the department may also revoke all certificates of registration,
273 | permits, or licenses issued by the department to that taxpayer.

274 | (a) Before the department may revoke the certificates of
275 | registration, permits, or licenses, the department must schedule
276 | an informal conference that the taxpayer is required to attend.
277 | At the conference, the taxpayer may present evidence regarding
278 | the department's intended action or enter into a compliance
279 | agreement. The department must provide written notice to the
280 | taxpayer of the department's intended action and the time, date,

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281 and place of the conference. The department shall issue an
282 administrative complaint to revoke the certificates of
283 registration, permits, or licenses if the taxpayer does not
284 attend the conference, enter into a compliance agreement, or
285 comply with the compliance agreement.

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

289 1. The outstanding liabilities of the taxpayer have been
290 satisfied; or

291 2. The department enters into a written agreement with the
292 taxpayer regarding any outstanding liabilities and, as part of
293 such agreement, agrees to issue a certificate of registration,
294 permit, or license.

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

298 (2) If the department files a warrant or a judgment lien
299 certificate in connection with a jeopardy assessment, the
300 department must comply with the procedures in s. 213.732 before
301 or in conjunction with those provided in this section.

302 (3) The department may adopt rules to administer this
303 section.

304 Section 6. Effective July 1, 2010, the Department of
305 Revenue is authorized to adopt emergency rules pursuant to ss.
306 120.536(1) and 120.54, Florida Statutes, to administer s.
307 213.692, Florida Statutes. The emergency rules shall remain in
308 effect for 6 months after adoption and may be renewed during the

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309 pendency of procedures to adopt rules addressing the subject of
310 the emergency rules.

311 Section 7. Section 213.758, Florida Statutes, is created
312 to read:

313 213.758 Transfer of tax liabilities.-

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

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

318 1. That occurs due to the foreclosure of a security
319 interest issued to a person who is not an insider as defined in
320 s. 726.102;

321 2. That results from an eminent domain or condemnation
322 action;

323 3. Pursuant to chapter 61, chapter 702, or the United
324 States Bankruptcy Code;

325 4. To a financial institution, as defined in s. 655.005,
326 if the transfer is made to satisfy the transferor's debt to the
327 financial institution; or

328 5. To a third party to the extent that the proceeds are
329 used to satisfy the transferor's indebtedness to a financial
330 institution as defined in s. 655.005. If the third party
331 receives assets worth more than the indebtedness, the transfer
332 of the excess may not be deemed an involuntary transfer.

333 (b) "Transfer" means every mode, direct or indirect, with
334 or without consideration, of disposing of or parting with a
335 business or stock of goods, and includes, but is not limited to,
336 assigning, conveying, demising, gifting, granting, or selling.

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337 (2) A taxpayer who is liable for any tax, interest,
338 penalty, surcharge, or fee administered by the department
339 pursuant to chapter 443 or described in s. 72.011(1), excluding
340 corporate income tax, and who quits a business without the
341 benefit of a purchaser, successor, or assignee, or without
342 transferring the business or stock of goods to a transferee,
343 must file a final return and make full payment within 15 days
344 after quitting the business. A taxpayer who fails to file a
345 final return and make payment may not engage in any business in
346 this state until the final return has been filed and all taxes,
347 interest, or penalties due have been paid. The Department of
348 Legal Affairs may seek an injunction at the request of the
349 department to prevent further business activity until such tax,
350 interest, or penalties are paid. A temporary injunction
351 enjoining further business activity may be granted by a court
352 without notice.

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

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

363 1. The transferor provides a receipt or certificate from
364 the department to the transferee showing that the transferor is

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365 not liable for taxes, interest, or penalties from the operation
366 of the business; and

367 2. The department finds that the transferor is not liable
368 for taxes, interest, or penalties after an audit of the
369 transferor's books and records. The audit may be requested by
370 the transferee or the transferor. The department may charge a
371 fee for the cost of the audit if it has not issued a notice of
372 intent to audit by the time the request for the audit is
373 received.

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

382 (c) A transferee who acquires the business or stock of
383 goods and fails to pay the taxes, interest, or penalties due may
384 not engage in any business in the state until the taxes,
385 interest, or penalties are paid. The Department of Legal Affairs
386 may seek an injunction at the request of the department to
387 prevent further business activity until such tax, interest, or
388 penalties are paid. A temporary injunction enjoining further
389 business activity may be granted by a court without notice.

390 (5) The transferee, or transferees acting in concert, of
391 more than 50 percent of a business or stock of goods are jointly
392 and severally liable with the transferor for the payment of the

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393 taxes, interest, or penalties owed to the state from the
394 operation of the business by the transferor.

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

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

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

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

406 Section 8. For fiscal year 2010-2011, 25 full-time
407 equivalent positions, with associated salary rate of \$817,448,
408 are authorized. Also for fiscal year 2010-2011, the sums of
409 \$1,445,100 in recurring funds and \$96,925 in nonrecurring funds
410 from the General Revenue Fund are appropriated to the Department
411 of Revenue for the purpose of conducting audits and tax
412 collection services in the department.

413 Section 9. Except as otherwise expressly provided in this
414 act, this act shall take effect upon becoming a law.