

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39 | license has been revoked; providing exceptions; requiring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42 | registration, permit, or license has been revoked after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

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 | reenacting and amending s. 218.12, F.S.; making permanent
 69 | a methodology for determining the value of assessments for
 70 | certain homesteads for certain purposes; authorizing full-
 71 | time equivalent positions and providing an appropriation
 72 | for the purpose of conducting audits and tax collection
 73 | services in the Department of Revenue; providing an
 74 | effective date.

75 |
 76 | Be It Enacted by the Legislature of the State of Florida:

77 |
 78 | Section 1. (1) No later than July 1, 2010, the Department
 79 | of Revenue shall develop and implement an amnesty program for
 80 | taxpayers subject to the state and local taxes imposed by
 81 | chapters 125, 175, 185, 198, 199, 201, 202, 203, 206, 211, 212,
 82 | 220, 221, 252, 336, 376, 403, 624, 627, 629, and 681, Florida
 83 | Statutes.

84 | (2) The amnesty program shall be a one-time opportunity

85 for eligible taxpayers to satisfy their tax liabilities under
86 the revenue laws of this state and thereby avoid criminal
87 prosecution, penalties, and interest as provided in subsections
88 (5), (6), and (7). Any taxpayer that has entered into a
89 settlement of liability for state or local option taxes before
90 July 1, 2010, whether or not full and complete payment of the
91 settlement amount has been made, is not eligible to participate
92 in the amnesty program.

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

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

107 (5) A taxpayer may participate in the amnesty program
108 whether or not the taxpayer is under audit, inquiry,
109 examination, or civil investigation initiated by the Department
110 of Revenue, regardless of whether the amount due is included in
111 a proposed assessment or an assessment, bill, notice, or demand
112 for payment issued by the Department of Revenue, and without

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

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

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

141 the amnesty program.

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

163 (9) In lieu of making full payment, as provided in
164 subsection (3), a taxpayer may request in writing to make
165 stipulated payments under a stipulated payment agreement. To be
166 eligible to make stipulated payments, the taxpayer must sign the
167 agreement to participate in the amnesty program, make a request
168 for stipulated payments, and sign a stipulated payment

169 agreement. The taxpayer shall make a minimum down payment of
170 12.5 percent of the outstanding amount due under the amnesty,
171 pay the remaining balance in up to seven additional monthly
172 installments, and meet each payment term detailed on the
173 amortization schedule provided by the department. Interest on
174 the balance shall accrue pursuant to s. 213.235, Florida
175 Statutes. If a taxpayer fails to make a monthly installment
176 payment or is delinquent, the agreement to participate in the
177 amnesty program and the stipulated payment agreement are void
178 and the full amount of the original liability, including any
179 interest and penalty, are due and payable.

180 (10) A taxpayer under criminal investigation, indictment,
181 information, or prosecution regarding a revenue law of this
182 state is not eligible to participate in the amnesty program. A
183 taxpayer under pretrial intervention or a diversion program,
184 probation, or community control or in a work camp, jail, state
185 prison, or another correctional system regarding a revenue law
186 of this state is not eligible to participate in the amnesty
187 program.

188 (11) With or without an audit, the Department of Revenue
189 may issue a notice or demand for payment with respect to any tax
190 or interest that the department determines to be due with any
191 return filed under the tax amnesty program, and such notice and
192 demand is prima facie correct in any administrative, judicial,
193 or quasi-judicial proceeding.

194 (12) The Department of Revenue may, on the basis of fraud,
195 misrepresentation, or mutual mistake of fact, rescind a grant of
196 amnesty, including any amnesty granted as a result of

197 participation in the certified audit program during the period
198 the amnesty program is in effect. Any taxpayer that files under
199 the amnesty program false or fraudulent returns, forms, or
200 documentation or attempts in any manner to defeat or evade a tax
201 is subject to applicable penalties and criminal prosecution.

202 (13) Any local option tax administered by a local
203 government that imposed the tax pursuant to a statute permitting
204 self-administration is excluded from the amnesty program unless
205 the local government notifies the Department of Revenue by June
206 1, 2010, that it chooses to participate in the amnesty program.

207 (14) The executive director of the Department of Revenue
208 may adopt emergency rules under ss. 120.536(1) and 120.54(4),
209 Florida Statutes, to implement the amnesty program. Such rules
210 may provide forms, procedures, terms, conditions, and methods of
211 payment appropriate for fair and effective administration of the
212 amnesty program and to ensure taxpayers' ongoing commitment to
213 proper remittance of taxes to the state. Notwithstanding any
214 other law, the emergency rules shall remain in effect until 6
215 months after the date of adoption of the rule or the date of
216 final resolution of all amnesty applications filed pursuant to
217 this section, whichever is later.

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

224 Section 3. Effective July 1, 2010, paragraph (d) of

225 subsection (8) of section 213.053, Florida Statutes, is amended,
 226 and subsections (20) and (21) are added to that section, to
 227 read:

228 213.053 Confidentiality and information sharing.—

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

231 (d) Names, addresses, ~~and~~ sales tax registration
 232 information, and information relating to a public lodging
 233 establishment or a public food service establishment having an
 234 outstanding tax warrant, notice of lien, or judgment lien
 235 certificate to the Division of Hotels and Restaurants of the
 236 Department of Business and Professional Regulation in the
 237 conduct of its official duties.

238
 239 Disclosure of information under this subsection shall be
 240 pursuant to a written agreement between the executive director
 241 and the agency. Such agencies, governmental or nongovernmental,
 242 shall be bound by the same requirements of confidentiality as
 243 the Department of Revenue. Breach of confidentiality is a
 244 misdemeanor of the first degree, punishable as provided by s.
 245 775.082 or s. 775.083.

246 (20) (a) The department may publish a list of taxpayers
 247 against whom the department has filed a warrant, notice of lien,
 248 or judgment lien certificate. The list may include the name and
 249 address of each taxpayer; the amounts and types of delinquent
 250 taxes, fees, or surcharges, penalties, or interest; and the
 251 employer identification number or other taxpayer identification
 252 number.

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

256 (c) The department may adopt rules to administer this
 257 subsection.

258 (21) The department may disclose information relating to
 259 taxpayers against whom the department has filed a warrant,
 260 notice of lien, or judgment lien certificate. Such information
 261 includes the name and address of the taxpayer, the actions
 262 taken, the amounts and types of liabilities, and the amount of
 263 any collections made.

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

266 213.50 Failure to comply; revocation of corporate charter
 267 or license to operate a public lodging establishment or public
 268 food service establishment; refusal to reinstate charter or
 269 license.-

270 (1) Any corporation of this state which has an outstanding
 271 tax warrant that has existed for more than 3 consecutive months
 272 is subject to the revocation of its charter as provided in s.
 273 607.1420.

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

278 (3) (a) The Division of Hotels and Restaurants of the
 279 Department of Business and Professional Regulation may revoke a
 280 license to operate a public lodging establishment or a public

281 food service establishment if a tax warrant has been outstanding
 282 against the licenseholder for more than 3 months.

283 (b) The division may deny an application to renew a
 284 license to operate a public lodging establishment or a public
 285 food service establishment if a tax warrant has been outstanding
 286 against the licenseholder for more than 3 months.

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

289 213.692 Integrated enforcement authority.-

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

294 (a) Before the department may revoke the certificates of
 295 registration, permits, or licenses, the department must schedule
 296 an informal conference that the taxpayer is required to attend.
 297 At the conference, the taxpayer may present evidence regarding
 298 the department's intended action or enter into a compliance
 299 agreement. The department must provide written notice to the
 300 taxpayer of the department's intended action and the time, date,
 301 and place of the conference. The department shall issue an
 302 administrative complaint to revoke the certificates of
 303 registration, permits, or licenses if the taxpayer does not
 304 attend the conference, enter into a compliance agreement, or
 305 comply with the compliance agreement.

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

309 1. The outstanding liabilities of the taxpayer have been
310 satisfied; or

311 2. The department enters into a written agreement with the
312 taxpayer regarding any outstanding liabilities and, as part of
313 such agreement, agrees to issue a certificate of registration,
314 permit, or license.

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

318 (2) If the department files a warrant or a judgment lien
319 certificate in connection with a jeopardy assessment, the
320 department must comply with the procedures in s. 213.732 before
321 or in conjunction with those provided in this section.

322 (3) The department may adopt rules to administer this
323 section.

324 Section 6. Effective July 1, 2010, the Department of
325 Revenue is authorized to adopt emergency rules pursuant to ss.
326 120.536(1) and 120.54, Florida Statutes, to administer s.
327 213.692, Florida Statutes. The emergency rules shall remain in
328 effect for 6 months after adoption and may be renewed during the
329 pendency of procedures to adopt rules addressing the subject of
330 the emergency rules.

331 Section 7. Section 213.758, Florida Statutes, is created
332 to read:

333 213.758 Transfer of tax liabilities.-

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

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

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

341 2. That results from an eminent domain or condemnation
 342 action;

343 3. Pursuant to chapter 61, chapter 702, or the United
 344 States Bankruptcy Code;

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

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

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

357 (2) A taxpayer who is liable for any tax, interest,
 358 penalty, surcharge, or fee administered by the department
 359 pursuant to chapter 443 or described in s. 72.011(1), excluding
 360 corporate income tax, and who quits a business without the
 361 benefit of a purchaser, successor, or assignee, or without
 362 transferring the business or stock of goods to a transferee,

363 must file a final return and make full payment within 15 days
364 after quitting the business. A taxpayer who fails to file a
365 final return and make payment may not engage in any business in
366 this state until the final return has been filed and all taxes,
367 interest, or penalties due have been paid. The Department of
368 Legal Affairs may seek an injunction at the request of the
369 department to prevent further business activity until such tax,
370 interest, or penalties are paid. A temporary injunction
371 enjoining further business activity may be granted by a court
372 without notice.

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

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

383 1. The transferor provides a receipt or certificate from
384 the department to the transferee showing that the transferor is
385 not liable for taxes, interest, or penalties from the operation
386 of the business; and

387 2. The department finds that the transferor is not liable
388 for taxes, interest, or penalties after an audit of the
389 transferor's books and records. The audit may be requested by
390 the transferee or the transferor. The department may charge a

391 fee for the cost of the audit if it has not issued a notice of
392 intent to audit by the time the request for the audit is
393 received.

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

402 (c) A transferee who acquires the business or stock of
403 goods and fails to pay the taxes, interest, or penalties due may
404 not engage in any business in the state until the taxes,
405 interest, or penalties are paid. The Department of Legal Affairs
406 may seek an injunction at the request of the department to
407 prevent further business activity until such tax, interest, or
408 penalties are paid. A temporary injunction enjoining further
409 business activity may be granted by a court without notice.

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

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

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

421 (8) This section does not impose liability on a transferee
 422 of a business or stock of goods pursuant to an involuntary
 423 transfer.

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

426 Section 8. Notwithstanding section 25 of chapter 2009-82,
 427 Laws of Florida, subsection (3) of section 218.12, Florida
 428 Statutes, as created by section 24 of chapter 2009-82, Laws of
 429 Florida, shall not expire July 1, 2010, but is reenacted and
 430 amended to read:

431 218.12 Appropriations to offset reductions in ad valorem
 432 tax revenue in fiscally constrained counties.—

433 (3) In determining the reductions in ad valorem tax
 434 revenues occurring as a result of the implementation of the
 435 revisions to Art. VII of the State Constitution approved in the
 436 special election held on January 29, 2008, the value of
 437 assessments reduced pursuant to s. 4(d)(8)a., Art. VII of the
 438 State Constitution shall include only the reduction in taxable
 439 value for homesteads established January 1 of the year in which
 440 the determination is being made,~~2009.~~

441 Section 9. For fiscal year 2010-2011, 25 full-time
 442 equivalent positions, with associated salary rate of \$817,448,
 443 are authorized. Also for fiscal year 2010-2011, the sums of
 444 \$1,445,100 in recurring funds and \$96,925 in nonrecurring funds
 445 from the General Revenue Fund are appropriated to the Department

446 of Revenue for the purpose of conducting audits and tax
447 collection services in the department.

448 Section 10. Except as otherwise expressly provided in this
449 act, this act shall take effect upon becoming a law.