



379386

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/12/2011	.	
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The Committee on Commerce and Tourism (Dockery) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

213.758 Transfer of tax liabilities.-

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

(a) "Business" means any activity regularly engaged in by
any person, or caused to be engaged in by any person, for the
purpose of private or public gain, benefit, or advantage. The



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13 term does not include occasional or isolated sales or
14 transactions involving property or services by a person who does
15 not hold himself or herself out as engaged in business. A
16 discrete division or portion of a business is not a separate
17 business and must be aggregated with all other divisions or
18 portions that constitute a business if the division or portion
19 is not a separate legal entity.

20 (b) "Financial institution" means a financial institution
21 as defined in s. 655.005 and any person who controls, is
22 controlled by, or is under common control with a financial
23 institution as defined in s. 655.005.

24 (c) "Insider" means a person as defined in s. 726.102(7),
25 and a manager of, or a managing member of, a person who controls
26 a limited liability company or a relative thereof as defined in
27 s. 726.102(11).

28 (d) ~~(a)~~ "Involuntary transfer" means a transfer of a
29 business, ~~assets of a business,~~ or stock of goods ~~of a business~~
30 made without the consent of the transferor, including, but not
31 limited to, a transfer:

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

35 2. That results from an eminent domain or condemnation
36 action;

37 3. Pursuant to chapter 61, chapter 702, or the United
38 States Bankruptcy Code;

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



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

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

49 (f) "Tax" means any tax, interest, penalty, surcharge, or
50 fee administered by the department pursuant to chapter 443 or
51 any of the chapters specified in s. 213.05, excluding chapter
52 220, the corporate income tax code.

53 (g) ~~(b)~~ "Transfer" means every mode, direct or indirect,
54 with or without consideration, of disposing of or parting with a
55 business, assets of the business, or stock of goods of the
56 business, and includes, but is not limited to, assigning,
57 conveying, demising, gifting, granting, or selling, other than
58 to customers in the ordinary course of business, to a transferee
59 or to a group of transferees who are acting in concert. A
60 business is considered transferred when there is a transfer of
61 more than 50 percent of:

62 1. The business;

63 2. The assets of the business; or

64 3. The stock of goods of the business.

65 (2) A taxpayer engaged in a business who is liable for any
66 tax arising from the operation of that business, interest,
67 penalty, surcharge, or fee administered by the department
68 pursuant to chapter 443 or described in s. 72.011(1), excluding
69 corporate income tax, and who quits the a business without the
70 benefit of a purchaser, successor, or assignee, or without



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71 transferring the business, assets of the business, or stock of
72 goods of a business to a transferee, must file a final return
73 for the business and make full payment of all taxes arising from
74 the operation of that business within 15 days after quitting the
75 business. A taxpayer who fails to file a final return and make
76 payment may not engage in any business in this state until the
77 final return has been filed and all taxes, interest, or
78 penalties due have been paid. The Department of Legal Affairs
79 may seek an injunction at the request of the department to
80 prevent further business activity of a taxpayer who fails to
81 file a final return and make payment of the taxes associated
82 with the operation of the business until such taxes tax,
83 interest, or penalties are paid. A temporary injunction
84 enjoining further business activity shall may be granted by a
85 circuit court with jurisdiction over the taxpayer if the
86 department has provided at least 20 days' prior written notice
87 to the taxpayer without notice.

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

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



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100 1.a. The transferor provides a receipt or certificate of
101 compliance from the department to the transferee showing that
102 the transferor has not received a notice of audit and the
103 transferor has filed all required tax returns and has paid all
104 tax arising is not liable for taxes, interest, or penalties from
105 the operation of the business identified on the returns filed;
106 and

107 b. There were no insiders in common between the transferor
108 and the transferee at the time of the transfer; or

109 2. The department finds that the transferor is not liable
110 for taxes, interest, or penalties after an audit of the
111 transferor's books and records. The audit may be requested by
112 the transferee or the transferor and, if not done pursuant to
113 the certified audit program under s. 213.285, must be completed
114 by the department within 90 days after the records are made
115 available to the department. The department may charge a fee for
116 the cost of the audit if it has not issued a notice of intent to
117 audit by the time the request for the audit is received.

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

127 (c) ~~A transferee who acquires the business or stock of~~
128 ~~goods and fails to pay the taxes, interest, or penalties due may~~



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129 ~~not engage in any business in the state until the taxes,~~
130 ~~interest, or penalties are paid.~~ The Department of Legal Affairs
131 may seek an injunction at the request of the department to
132 prevent further business activity of a transferee who is liable
133 for unpaid tax of a transferor and who fails to pay or cause to
134 be paid the transferee's maximum liability for such tax due
135 until such maximum liability for the tax is, ~~interest, or~~
136 ~~penalties are paid.~~ A temporary injunction enjoining further
137 business activity shall ~~may~~ be granted by a circuit court with
138 jurisdiction over the transferee if: ~~without notice.~~

139 1. The assessment against the transferee is final and
140 either:

141 a. The time for filing a contest under s. 72.011 has
142 expired; or

143 b. Any contest filed pursuant to s. 72.011 resulted in a
144 final and nonappealable judgment sustaining any part of the
145 assessment; and

146 2. The department has provided at least 20 days' prior
147 written notice to the transferee of its intention to seek an
148 injunction.

149 (5) The transferee, or transferees acting in concert, of
150 more than 50 percent of a business, assets of the business, or
151 stock of goods of a business who are liable for any tax pursuant
152 to this section shall be ~~are~~ jointly and severally liable with
153 the transferor for the payment of the tax ~~taxes, interest, or~~
154 ~~penalties~~ owed to the state from the operation of the business
155 by the transferor up to the transferee's or transferees' maximum
156 liability for such tax due.

157 (6) The maximum liability of a transferee pursuant to this



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158 section is equal to the fair market value of the business,
159 assets of the business, or stock of goods of the business
160 property transferred to the transferee or the total purchase
161 price paid by the transferee for the business, assets of the
162 business, or stock of goods of the business, whichever is
163 greater.

164 (a) The fair market value must be determined net of any
165 liens or liabilities, with the exception of liens or liabilities
166 owed to insiders.

167 (b) The total purchase price must be determined net of
168 liens and liabilities against the assets, with the exception of:

169 1. Liens or liabilities owed to insiders.

170 2. Liens or liabilities assumed by the transferee that are
171 not liens or liabilities owed to insiders.

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

175 (8) This section does not impose liability on a transferee
176 of a business, assets of a business, or stock of goods of a
177 business pursuant to an involuntary transfer.

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

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

183 213.053 Confidentiality and information sharing.—

184 (17) The department may provide to the person against whom
185 transferee liability is being asserted pursuant to s. 213.758 ~~s.~~
186 ~~212.10(1)~~ information relating to the basis of the claim.



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187 Section 3. Section 202.31, Florida Statutes, is repealed.
188 Section 4. Section 212.10, Florida Statutes, is repealed.
189 Section 5. This act shall take effect July 1, 2011.

190

191 ===== T I T L E A M E N D M E N T =====

192 And the title is amended as follows:

193 Delete everything before the enacting clause
194 and insert:

195 A bill to be entitled
196 An act relating to the transfer of tax liability;
197 amending s. 213.758, F.S.; providing definitions;
198 revising provisions relating to tax liability when a
199 person transfers or quits a business; providing that
200 the transfer of the assets of a business or stock of
201 goods of a business under certain circumstances is
202 considered a transfer of the business; requiring the
203 Department of Revenue to provide certain notification
204 to a business before a circuit court shall temporarily
205 enjoin business activity by that business; providing
206 that transferees of the business are liable for
207 certain taxes unless specified conditions are met;
208 requiring the department to conduct certain audits
209 relating to the tax liability of transferors and
210 transferees of a business within a specified time
211 period; requiring certain notification by the
212 Department of Revenue to a transferee before a circuit
213 court shall enjoin business activity in an action
214 brought by the Department of Legal Affairs seeking an
215 injunction; specifying a transferor and transferee of



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216 the assets of a business are jointly and severally
217 liable for certain tax payments up to a specified
218 maximum amount; specifying the maximum liability of a
219 transferee; providing methods for calculating the fair
220 market value or total purchase price of specified
221 business transfers to determine maximum tax liability
222 of transferees; amending s. 213.053, F.S.; authorizing
223 the Department of Revenue to provide certain tax
224 information to a transferee against whom tax liability
225 is being asserted pursuant to s. 213.758, F.S.;
226 repealing s. 202.31, F.S., relating to the tax
227 liability and criminal liability of dealers of
228 communications services who make certain transfers
229 related to a communications services business;
230 repealing s. 212.10, F.S., relating to a dealer's tax
231 liability and criminal liability for sales tax when
232 certain transfers of a business occur; providing an
233 effective date.