

HB 907

2011

1 A bill to be entitled
2 An act relating to the transfer of tax liability; amending
3 s. 213.758, F.S.; providing definitions; revising
4 provisions relating to tax liability when a person
5 transfers or quits a business; excluding the corporate
6 income tax from provisions relating to the transfer of tax
7 liabilities when a business is transferred; providing that
8 the transfer of the assets of a business or stock of goods
9 of a business under certain circumstances constitutes a
10 transfer of the business; requiring the Department of
11 Revenue to provide certain notification to a business
12 before a circuit court may enjoin business activity by
13 that business; providing that transferees of the business
14 are liable for certain taxes unless specified conditions
15 are met; requiring the department to conduct certain
16 audits relating to the tax liability of transferors and
17 transferees of a business within a specified time period;
18 limiting a transferee who is liable for unpaid taxes from
19 engaging in business activities under certain
20 circumstances; providing an exception during the pendency
21 of a timely filed appeal; providing for the posting of
22 security during the pendency of an appeal under certain
23 circumstances; requiring certain notification by the
24 Department of Revenue to a transferee before a circuit
25 court may enjoin business activity in an action brought by
26 the Department of Legal Affairs seeking an injunction;
27 specifying a transferor and transferee of the assets of a
28 business are jointly and severally liable for certain tax

HB 907

2011

29 | payments up to a specified maximum amount; specifying the
 30 | maximum liability of a transferee; providing methods for
 31 | calculating the fair market value or total purchase price
 32 | of specified business transfers to determine maximum tax
 33 | liability of transferees; repealing s. 202.31, F.S.,
 34 | relating to the tax liability and criminal liability of
 35 | dealers of communications services who make certain
 36 | transfers related to a communications services business;
 37 | repealing s. 212.10, F.S., relating to a dealer's tax
 38 | liability and criminal liability for sales tax when
 39 | certain transfers of a business occur; providing an
 40 | effective date.

41 |

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

43 |

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

46 | 213.758 Transfer of tax liabilities.—

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

48 | (a) "Business" means any activity regularly engaged in by
 49 | any person, or caused to be engaged in by any person, for the
 50 | purpose of direct or indirect, private or public gain, benefit,
 51 | or advantage. The term does not include occasional or isolated
 52 | sales or transactions involving property or services by a person
 53 | who does not hold himself or herself out as engaged in business.
 54 | A discreet division or portion of a business is not a separate
 55 | business and must be aggregated with all other divisions or
 56 | portions that constitute a business if the division or portion

HB 907

2011

57 is not a separate legal entity.

58 (b) "Financial institution" means a financial institution
59 as defined in s. 655.005 and any person who controls, is
60 controlled by, or is under common control with a financial
61 institution as defined in s. 655.005.

62 (c) "Insider" means a person as defined in s. 726.102(7),
63 and a member, manager, or managing member of a limited liability
64 company.

65 (d)-(a) "Involuntary transfer" means a transfer of a
66 business or stock of goods made without the consent of the
67 transferor, including, but not limited to, a transfer:

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

71 2. That results from an eminent domain or condemnation
72 action;

73 3. Pursuant to chapter 61, chapter 702, or the United
74 States Bankruptcy Code;

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

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

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

85 (f) "Tax" means any tax, interest, penalty, surcharge, or
 86 fee administered by the department pursuant to chapter 443 or
 87 any of the chapters specified in s. 213.05, excluding corporate
 88 income tax.

89 (g) ~~(b)~~ "Transfer" means every mode, direct or indirect,
 90 with or without consideration, of disposing of or parting with a
 91 business, assets of the business, or stock of goods, and
 92 includes, but is not limited to, assigning, conveying, demising,
 93 gifting, granting, or selling, other than to customers in the
 94 ordinary course of business, to a transferee or to a group of
 95 transferees who are acting in concert. A business is transferred
 96 when there is a transfer of more than 50 percent of:

- 97 1. The business;
- 98 2. The assets of the business; or
- 99 3. The stock of goods of the business.

100 (2) A taxpayer in business who is liable for any tax
 101 arising from the operation of that business, ~~interest, penalty,~~
 102 ~~surcharge, or fee administered by the department pursuant to~~
 103 ~~chapter 443 or described in s. 72.011(1), excluding corporate~~
 104 ~~income tax,~~ and who quits the a business without the benefit of
 105 a purchaser, successor, or assignee, or without transferring the
 106 business, assets of the business, or stock of goods to a
 107 transferee, must file a final return for the business and make
 108 full payment of all taxes arising from the operation of that
 109 business within 15 days after quitting the business. A taxpayer
 110 who fails to file a final return and make payment may not engage
 111 in any business in this state until the final return has been
 112 filed and all taxes, ~~interest, or penalties~~ due have been paid.

113 The Department of Legal Affairs may seek an injunction at the
 114 request of the department to prevent further business activity
 115 of a taxpayer who fails to file a final return and make payment
 116 of the taxes associated with the operation of the business until
 117 such taxes ~~tax, interest, or penalties~~ are paid. A temporary
 118 injunction enjoining further business activity may be granted by
 119 a circuit court with jurisdiction over the taxpayer if the
 120 department has provided at least 20 days' prior written notice
 121 to the taxpayer ~~without notice~~. The written notice may be
 122 provided to the taxpayer before the filing of the lawsuit
 123 seeking the injunction.

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

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

135 1.a. The transferor provides a receipt or certificate of
 136 compliance from the department to the transferee showing that
 137 the transferor has not received a notice of audit and the
 138 transferor has filed all required tax returns and has paid all
 139 tax arising ~~is not liable for taxes, interest, or penalties~~ from
 140 the operation of the business identified on the returns filed;

141 and
 142 b. There were no insiders in common between the transferor
 143 and the transferee at the time of the transfer; ~~or and~~

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

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

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

HB 907

2011

169 final determination is entered against the transferee, although
170 the court may, during the pendency of the action, require the
171 transferee to post a bond or other security if the department
172 establishes that it is likely to prevail and the collection of
173 the unpaid tax would be jeopardized by delay ~~acquires the~~
174 ~~business or stock of goods and fails to pay the taxes, interest,~~
175 ~~or penalties due may not engage in any business in the state~~
176 ~~until the taxes, interest, or penalties are paid.~~ The Department
177 of Legal Affairs may seek an injunction at the request of the
178 department to prevent further business activity of a transferee
179 who is liable for unpaid tax of a transferor and who fails to
180 pay or cause to be paid the transferee's maximum liability for
181 such tax due until such maximum liability for the tax is~~r~~
182 ~~interest, or penalties are paid.~~ A temporary injunction
183 enjoining further business activity may be granted by a circuit
184 court if the department has provided at least 20 days' prior
185 written notice to the taxpayer without notice. The written
186 notice may be provided to the taxpayer before the filing of the
187 lawsuit seeking the injunction.

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

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

HB 907

2011

197 | section is equal to the fair market value of the business,
 198 | assets of the business, or stock of goods ~~property~~ transferred
 199 | to the transferee or the total purchase price paid by the
 200 | transferee for the business, assets of the business, or stock of
 201 | goods, whichever is greater.

202 | (a) The fair market value must be determined net of any
 203 | liens or liabilities, with the exception of liens or liabilities
 204 | owed to insiders.

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

207 | 1. Liens or liabilities owed to insiders.

208 | 2. Liens or liabilities assumed by the transferee that are
 209 | not liens or liabilities owed to insiders.

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

213 | (8) This section does not impose liability on a transferee
 214 | of a business or stock of goods pursuant to an involuntary
 215 | transfer.

216 | ~~(9) The department may adopt rules necessary to administer~~
 217 | ~~and enforce this section.~~

218 | Section 2. Sections 202.31 and 212.10, Florida Statutes,
 219 | are repealed.

220 | Section 3. This act shall take effect July 1, 2011.