

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; providing that the transfer
6 of the assets of a business or stock of goods of a
7 business under certain circumstances is considered a
8 transfer of the business; requiring the Department of
9 Revenue to provide certain notification to a business
10 before a circuit court shall temporarily enjoin business
11 activity by that business; providing that transferees of
12 the business are liable for certain taxes unless specified
13 conditions are met; requiring the department to conduct
14 certain audits relating to the tax liability of
15 transferors and transferees of a business within a
16 specified time period; requiring certain notification by
17 the Department of Revenue to a transferee before a circuit
18 court shall enjoin business activity in an action brought
19 by the Department of Legal Affairs seeking an injunction;
20 specifying a transferor and transferee of the assets of a
21 business are jointly and severally liable for certain tax
22 payments up to a specified maximum amount; specifying the
23 maximum liability of a transferee; providing methods for
24 calculating the fair market value or total purchase price
25 of specified business transfers to determine maximum tax
26 liability of transferees; excluding certain transferees
27 from tax liability when the transfer consists only of
28 specified assets; amending s. 213.053, F.S.; authorizing

29 | the Department of Revenue to provide certain tax
 30 | information to a transferee against whom tax liability is
 31 | being asserted pursuant to s. 213.758, F.S.; repealing s.
 32 | 202.31, F.S., relating to the tax liability and criminal
 33 | liability of dealers of communications services who make
 34 | certain transfers related to a communications services
 35 | business; repealing s. 212.10, F.S., relating to a
 36 | dealer's tax liability and criminal liability for sales
 37 | tax when certain transfers of a business occur; providing
 38 | an effective date.

39 |

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

41 |

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

44 | 213.758 Transfer of tax liabilities.—

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

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

56 | (b) "Financial institution" means a financial institution

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57 as defined in s. 655.005 and any person who controls, is
58 controlled by, or is under common control with a financial
59 institution as defined in s. 655.005.

60 (c) "Insider" means a person as defined in s. 726.102(7),
61 and a manager of, a managing member of, a person who controls a
62 limited liability company or a relative thereof as defined in s.
63 726.102(11).

64 (d) ~~(a)~~ "Involuntary transfer" means a transfer of a
65 business, assets of a business, or stock of goods of a business
66 made without the consent of the transferor, including, but not
67 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 chapter
 88 220, the corporate income tax code.

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 of the
 92 business, and includes, but is not limited to, assigning,
 93 conveying, demising, gifting, granting, or selling, other than
 94 to customers in the ordinary course of business, to a transferee
 95 or to a group of transferees who are acting in concert. A
 96 business is considered transferred when there is a transfer of
 97 more than 50 percent of:

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

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

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

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

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 may charge a fee for
151 the cost of the audit if it has not issued a notice of intent to
152 audit by the time the request for the audit is received.

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

162 ~~(c) A transferee who acquires the business or stock of~~
163 ~~goods and fails to pay the taxes, interest, or penalties due may~~
164 ~~not engage in any business in the state until the taxes,~~
165 ~~interest, or penalties are paid.~~ The Department of Legal Affairs
166 may seek an injunction at the request of the department to
167 prevent further business activity of a transferee who is liable
168 for unpaid tax of a transferor and who fails to pay or cause to

169 be paid the transferee's maximum liability for such tax due
 170 until such maximum liability for the tax is,~~interest, or~~
 171 ~~penalties~~ are paid. A temporary injunction enjoining further
 172 business activity shall ~~may~~ be granted by a circuit court if:
 173 ~~without notice.~~

174 1. The assessment against the transferee is final and
 175 either:

176 a. The time for filing a contest under s. 72.011 has
 177 expired; or

178 b. Any contest filed pursuant to s. 72.011 resulted in a
 179 final and nonappealable judgment sustaining any part of the
 180 assessment; and

181 2. The department has provided at least 20 days' prior
 182 written notice to the transferee of its intention to seek an
 183 injunction.

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

192 (6) The maximum liability of a transferee pursuant to this
 193 section is equal to the fair market value of the business,
 194 assets of the business, or stock of goods of the business
 195 ~~property~~ transferred to the transferee or the total purchase
 196 price paid by the transferee for the business, assets of the

197 business, or stock of goods of the business, whichever is
 198 greater.

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

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

204 1. Liens or liabilities owed to insiders.

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

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

210 (8) This section does not impose liability on a transferee
 211 of a business, assets of a business, or stock of goods of a
 212 business when:

213 (a) The transfer is pursuant to an involuntary transfer;
 214 or

215 (b) The transferee is not an insider, and the asset
 216 transferred consists solely of a one- to four-family residential
 217 real property and furnishings and fixtures therein; vacant real
 218 property; or owner-occupied commercial real property; and, in
 219 each case, is not accompanied by a transfer of other assets of
 220 the business.

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

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

226 213.053 Confidentiality and information sharing.—

227 (17) The department may provide to the person against whom
228 transferee liability is being asserted pursuant to s. 213.758 ~~s.~~
229 ~~212.10(1)~~ information relating to the basis of the claim.

230 Section 3. Section 202.31, Florida Statutes, is repealed.

231 Section 4. Section 212.10, Florida Statutes, is repealed.

232 Section 5. This act shall take effect July 1, 2011.