

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

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:

61 1. Any person included within the meaning of insider as
62 used in s. 726.102(7); or

63 2. A manager of, a managing member of, or a person who
64 controls a transferor that is a limited liability company, or a
65 relative as defined in s. 726.102(11) of any such persons.

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

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

73 2. That results from an eminent domain or condemnation
74 action;

75 3. Pursuant to chapter 61, chapter 702, or the United
76 States Bankruptcy Code;

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

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

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

87 (f) "Tax" means any tax, interest, penalty, surcharge, or
 88 fee administered by the department pursuant to chapter 443 or
 89 any of the chapters specified in s. 213.05, excluding chapter
 90 220, the corporate income tax code.

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

- 100 1. The business;
- 101 2. The assets of the business; or
- 102 3. The stock of goods of the business.

103 (2) A taxpayer engaged in a business who is liable for any
 104 tax arising from the operation of that business, ~~interest,~~
 105 ~~penalty, surcharge, or fee administered by the department~~
 106 ~~pursuant to chapter 443 or described in s. 72.011(1), excluding~~
 107 ~~corporate income tax,~~ and who quits the a business without the
 108 benefit of a purchaser, successor, or assignee, or without
 109 transferring the business, assets of the business, or stock of
 110 goods of a business to a transferee, must file a final return
 111 for the business and make full payment of all taxes arising from
 112 the operation of that business within 15 days after quitting the

113 ~~business. A taxpayer who fails to file a final return and make~~
 114 ~~payment may not engage in any business in this state until the~~
 115 ~~final return has been filed and all taxes, interest, or~~
 116 ~~penalties due have been paid.~~ The Department of Legal Affairs
 117 may seek an injunction at the request of the department to
 118 prevent further business activity of a taxpayer who fails to
 119 file a final return and make payment of the taxes associated
 120 with the operation of the business until such taxes tax,
 121 ~~interest, or penalties~~ are paid. A temporary injunction
 122 enjoining further business activity shall ~~may~~ be granted by a
 123 circuit court if the department has provided at least 20 days'
 124 prior written notice to the taxpayer ~~without notice.~~

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

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

137 1.a. The transferor provides a receipt or certificate of
 138 compliance from the department to the transferee showing that
 139 the transferor has not received a notice of audit and the
 140 transferor has filed all required tax returns and has paid all

141 ~~tax arising is not liable for taxes, interest, or penalties~~ from
 142 the operation of the business identified on the returns filed;
 143 and

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

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

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

164 (c) ~~A transferee who acquires the business or stock of~~
 165 ~~goods and fails to pay the taxes, interest, or penalties due may~~
 166 ~~not engage in any business in the state until the taxes,~~
 167 ~~interest, or penalties are paid.~~ The Department of Legal Affairs
 168 may seek an injunction at the request of the department to

169 prevent further business activity of a transferee who is liable
170 for unpaid tax of a transferor and who fails to pay or cause to
171 be paid the transferee's maximum liability for such tax due
172 until such maximum liability for the tax ~~is, interest, or~~
173 ~~penalties~~ are paid. A temporary injunction enjoining further
174 business activity shall ~~may~~ be granted by a circuit court if:
175 ~~without notice.~~

176 1. The assessment against the transferee is final and
177 either:

178 a. The time for filing a contest under s. 72.011 has
179 expired; or

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

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

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

194 (6) The maximum liability of a transferee pursuant to this
195 section is equal to the fair market value of the business,
196 assets of the business, or stock of goods of the business

197 ~~property~~ transferred to the transferee or the total purchase
 198 price paid by the transferee for the business, assets of the
 199 business, or stock of goods of the business, whichever is
 200 greater.

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

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

206 1. Liens or liabilities owed to insiders.

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

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

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

215 (a) The transfer is pursuant to an involuntary transfer;
 216 or

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

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

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

228 213.053 Confidentiality and information sharing.—

229 (17) The department may provide to the person against whom
230 transferee liability is being asserted pursuant to s. 213.758 ~~s.~~
231 ~~212.10(1)~~ information relating to the basis of the claim.

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

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

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