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HB 103

2012 Legislature

1  
2 An act relating to the transfer of tax liability;  
3 amending s. 213.758, F.S.; providing definitions;  
4 revising provisions relating to tax liability when a  
5 person transfers or quits a business; providing that  
6 the transfer of the assets of a business or stock of  
7 goods of a business under certain circumstances is  
8 considered a transfer of the business; requiring the  
9 Department of Revenue to provide certain notification  
10 to a business before a circuit court shall temporarily  
11 enjoin business activity by that business; providing  
12 that transferees of the business are liable for  
13 certain taxes unless specified conditions are met;  
14 requiring the department to conduct certain audits  
15 relating to the tax liability of transferors and  
16 transferees of a business within a specified time  
17 period; requiring certain notification by the  
18 Department of Revenue to a transferee before a circuit  
19 court shall enjoin business activity in an action  
20 brought by the Department of Legal Affairs seeking an  
21 injunction; specifying a transferor and transferee of  
22 the assets of a business are jointly and severally  
23 liable for certain tax payments up to a specified  
24 maximum amount; specifying the maximum liability of a  
25 transferee; providing methods for calculating the fair  
26 market value or total purchase price of specified  
27 business transfers to determine maximum tax liability  
28 of transferees; excluding certain transferees from tax

ENROLLED  
HB 103

2012 Legislature

29 liability when the transfer consists only of specified  
 30 assets; amending s. 213.053, F.S.; authorizing the  
 31 Department of Revenue to provide certain tax  
 32 information to a transferee against whom tax liability  
 33 is being asserted pursuant to s. 213.758, F.S.;

34 repealing s. 202.31, F.S., relating to the tax  
 35 liability and criminal liability of dealers of  
 36 communications services who make certain transfers  
 37 related to a communications services business;  
 38 repealing s. 212.10, F.S., relating to a dealer's tax  
 39 liability and criminal liability for sales tax when  
 40 certain transfers of a business occur; providing an  
 41 effective date.

42

43 Be It Enacted by the Legislature of the State of Florida:

44

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

47 213.758 Transfer of tax liabilities.—

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

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

ENROLLED  
HB 103

2012 Legislature

57 portions that constitute a business if the division or portion  
58 is not a separate legal entity.

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

63 (c) "Insider" means:

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

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

69 (d)-~~(a)~~ "Involuntary transfer" means a transfer of a  
70 business, assets of a business, or stock of goods of a business  
71 made without the consent of the transferor, including, but not  
72 limited to, a transfer:

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

76 2. That results from an eminent domain or condemnation  
77 action;

78 3. Pursuant to chapter 61, chapter 702, or the United  
79 States Bankruptcy Code;

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

83 5. To a third party to the extent that the proceeds are  
84 used to satisfy the transferor's indebtedness to a financial

ENROLLED  
HB 103

2012 Legislature

85 institution ~~as defined in s. 655.005~~. If the third party  
86 receives assets worth more than the indebtedness, the transfer  
87 of the excess may not be deemed an involuntary transfer.

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

90 (f) "Tax" means any tax, interest, penalty, surcharge, or  
91 fee administered by the department pursuant to chapter 443 or  
92 any of the chapters specified in s. 213.05, excluding chapter  
93 220, the corporate income tax code.

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

- 103 1. The business;
- 104 2. The assets of the business; or
- 105 3. The stock of goods of the business.

106 (2) A taxpayer engaged in a business who is liable for any  
107 tax arising from the operation of that business, ~~interest,~~  
108 ~~penalty, surcharge, or fee administered by the department~~  
109 ~~pursuant to chapter 443 or described in s. 72.011(1), excluding~~  
110 ~~corporate income tax,~~ and who quits the a business without the  
111 benefit of a purchaser, successor, or assignee, or without  
112 transferring the business, assets of the business, or stock of

ENROLLED  
HB 103

2012 Legislature

113 | goods of a business to a transferee, must file a final return  
 114 | for the business and make full payment of all taxes arising from  
 115 | the operation of that business within 15 days after quitting the  
 116 | business. ~~A taxpayer who fails to file a final return and make~~  
 117 | ~~payment may not engage in any business in this state until the~~  
 118 | ~~final return has been filed and all taxes, interest, or~~  
 119 | ~~penalties due have been paid.~~ The Department of Legal Affairs  
 120 | may seek an injunction at the request of the department to  
 121 | prevent further business activity of a taxpayer who fails to  
 122 | file a final return and make payment of the taxes associated  
 123 | with the operation of the business until such taxes tax,  
 124 | ~~interest, or penalties~~ are paid. A temporary injunction  
 125 | enjoining further business activity shall may be granted by a  
 126 | circuit court if the department has provided at least 20 days'  
 127 | prior written notice to the taxpayer without notice.

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

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

140 |             1.a. The transferor provides a receipt or certificate of

ENROLLED  
HB 103

2012 Legislature

141 compliance from the department to the transferee showing that  
 142 the transferor has not received a notice of audit and the  
 143 transferor has filed all required tax returns and has paid all  
 144 tax arising is not liable for taxes, interest, or penalties from  
 145 the operation of the business identified on the returns filed;  
 146 and

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

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

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

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

## ENROLLED

HB 103

2012 Legislature

169 ~~not engage in any business in the state until the taxes,~~  
170 ~~interest, or penalties are paid.~~ The Department of Legal Affairs  
171 may seek an injunction at the request of the department to  
172 prevent further business activity of a transferee who is liable  
173 for unpaid tax of a transferor and who fails to pay or cause to  
174 be paid the transferee's maximum liability for such tax due  
175 until such maximum liability for the tax is, ~~interest, or~~  
176 ~~penalties are paid.~~ A temporary injunction enjoining further  
177 business activity shall ~~may~~ be granted by a circuit court if:  
178 ~~without notice.~~

179 1. The assessment against the transferee is final and  
180 either:

181 a. The time for filing a contest under s. 72.011 has  
182 expired; or

183 b. Any contest filed pursuant to s. 72.011 resulted in a  
184 final and nonappealable judgment sustaining any part of the  
185 assessment; and

186 2. The department has provided at least 20 days' prior  
187 written notice to the transferee of its intention to seek an  
188 injunction.

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

ENROLLED  
HB 103

2012 Legislature

197           (6) The maximum liability of a transferee pursuant to this  
198 section is equal to the fair market value of the business,  
199 assets of the business, or stock of goods of the business  
200 ~~property~~ transferred to the transferee or the total purchase  
201 price paid by the transferee for the business, assets of the  
202 business, or stock of goods of the business, whichever is  
203 greater.

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

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

- 209           1. Liens or liabilities owed to insiders.
- 210           2. Liens or liabilities assumed by the transferee that are  
211 not liens or liabilities owed to insiders.

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

215           (8) This section does not impose liability on a transferee  
216 of a business, assets of a business, or stock of goods of a  
217 business when:

218           (a) The transfer is pursuant to an involuntary transfer;  
219 or

220           (b) The transferee is not an insider, and the asset  
221 transferred consists solely of a one- to four-family residential  
222 real property and furnishings and fixtures therein; real  
223 property that has not been improved with any building; or owner-  
224 occupied commercial real property; and, in each case, is not



ENROLLED

HB 103

2012 Legislature

225 accompanied by a transfer of other assets of the business.  
 226 (9) The department may adopt rules necessary to administer  
 227 and enforce this section.  
 228 Section 2. Subsection (17) of section 213.053, Florida  
 229 Statutes, is amended to read:  
 230 213.053 Confidentiality and information sharing.—  
 231 (17) The department may provide to the person against whom  
 232 transferee liability is being asserted pursuant to s. 213.758  
 233 ~~212.10(1)~~ information relating to the basis of the claim.  
 234 Section 3. Section 202.31, Florida Statutes, is repealed.  
 235 Section 4. Section 212.10, Florida Statutes, is repealed.  
 236 Section 5. This act shall take effect upon becoming a law.