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 HB 103

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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

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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

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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

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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

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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

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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~~

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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.

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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

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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.