

CHAPTER 2012-55

House Bill No. 103

An act relating to the transfer of tax liability; amending s. 213.758, F.S.; providing definitions; revising provisions relating to tax liability when a person transfers or quits a business; providing that the transfer of the assets of a business or stock of goods of a business under certain circumstances is considered a transfer of the business; requiring the Department of Revenue to provide certain notification to a business before a circuit court shall temporarily enjoin business activity by that business; providing that transferees of the business are liable for certain taxes unless specified conditions are met; requiring the department to conduct certain audits relating to the tax liability of transferors and transferees of a business within a specified time period; requiring certain notification by the Department of Revenue to a transferee before a circuit court shall enjoin business activity in an action brought by the Department of Legal Affairs seeking an injunction; specifying a transferor and transferee of the assets of a business are jointly and severally liable for certain tax payments up to a specified maximum amount; specifying the maximum liability of a transferee; providing methods for calculating the fair market value or total purchase price of specified business transfers to determine maximum tax liability of transferees; excluding certain transferees from tax liability when the transfer consists only of specified assets; amending s. 213.053, F.S.; authorizing the Department of Revenue to provide certain tax information to a transferee against whom tax liability is being asserted pursuant to s. 213.758, F.S.; repealing s. 202.31, F.S., relating to the tax liability and criminal liability of dealers of communications services who make certain transfers related to a communications services business; repealing s. 212.10, F.S., relating to a dealer's tax liability and criminal liability for sales tax when certain transfers of a business occur; providing an effective date.

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

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

213.758 Transfer of tax liabilities.—

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

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

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

(c) “Insider” means:

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

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

(d)(a) “Involuntary transfer” means a transfer of a business, ~~assets of a business,~~ or stock of goods ~~of a business~~ made without the consent of the transferor, including, but not limited to, a transfer:

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

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

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

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

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

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

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

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

1. The business;

2. The assets of the business; or

3. The stock of goods of the business.

(2) ~~A taxpayer engaged in a business who is liable for any tax arising from the operation of that business, interest, penalty, surcharge, or fee administered by the department pursuant to chapter 443 or described in s. 72.011(1), excluding corporate income tax, and who quits the a business without the benefit of a purchaser, successor, or assignee, or without transferring the business, assets of the business, or stock of goods of a business to a transferee, must file a final return for the business and make full payment of all taxes arising from the operation of that business within 15 days after quitting the business. A taxpayer who fails to file a final return and make payment may not engage in any business in this state until the final return has been filed and all taxes, interest, or penalties due have been paid. The Department of Legal Affairs may seek an injunction at the request of the department to prevent further business activity of a taxpayer who fails to file a final return and make payment of the taxes associated with the operation of the business until such taxes tax, interest, or penalties are paid. A temporary injunction enjoining further business activity shall may be granted by a circuit court if the department has provided at least 20 days' prior written notice to the taxpayer without notice.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Liens or liabilities owed to insiders.

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

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

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

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

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

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

Section 2. Subsection (17) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

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

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

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

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor April 6, 2012.

Filed in Office Secretary of State April 6, 2012.