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Buyer Beware: Liability of Business Buyer for Seller's Taxes

Section 213.758, Florida Statutes was amended in 2012 clarifying that the transfer of the assets or stock of goods of a business is considered the sale of the business and clarifying the potential tax liability of the transferee.

For purposes of the statute, the following definitions apply:

- "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.
- "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.
- "Stock of goods" means the inventory of a business held for sale to customers in the ordinary course of business.
- "Tax" means any tax, interest, penalty, surcharge, or fee administered by the Florida Department of Revenue excluding corporate income tax. "Tax" includes sales taxes, tangible and intangible personal property taxes, motor fuel taxes and unemployment contributions.

The transferee, or a group of transferees, of more than 50% of the business, its assets, or its stock of goods is jointly and severally liable with the transferor for any unpaid tax owed to the State of Florida by the transferor arising from the operation of the business unless the transferor provides a receipt or certificate of compliance from the Department of Revenue 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 from the operation of the business.

Alternatively, the transferee may escape liability by requesting an audit by the Department of Revenue of the transferor's books and records and a finding by the Department that the transferor has no liability for taxes, interest or penalties.

The transferee is entitled, under the statute, to withhold a portion of the purchase price to pay the tax owed to the State provided that the transferee



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must pay the withheld payment to the State within 30 days after the date of transfer.

The maximum liability of the transferee pursuant to the statute is equal to the greater of the fair market value of the business assets or stock of goods transferred, or the total purchase price paid by the transferee.

The statute applies to the transfer of commercial properties which are leased, such as office buildings and strip centers, but does not apply to the transfer of 1-4 family residential real property and furnishings and fixtures therein; real property that has not been improved with any buildings; or owner occupied commercial real property if the transfer it is not accompanied by transfer of other assets of the business.

The purchase of even the smallest business, or its assets, is a complex transaction requiring advance planning and consideration as to the type of purchase entity to be utilized, taxation issues, restrictions on competition, employee issues, release of liens, and avoidance of liability associated with prior business operations.



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