

Western Australia

## **Revenue Laws Amendment Act (No. 2) 2012**

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As at 08 Oct 2012

No. 32 of 2012

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## Revenue Laws Amendment Act (No. 2) 2012

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Western Australia

## **Revenue Laws Amendment Act (No. 2) 2012**

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**No. 32 of 2012**

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**An Act to amend —**

- **the *Duties Act 2008*; and**
- **the *First Home Owner Grant Act 2000*; and**
- **the *Land Tax Assessment Act 2002*; and**
- **the *Pay-roll Tax Assessment Act 2002*.**

[Assented to 8 October 2012]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Revenue Laws Amendment Act (No. 2) 2012*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2, other than sections 5, 6, 7, 12, 15, 18, 22 and 25, is deemed to have come into operation on 1 July 2008;
- (c) Part 4 is deemed to have come into operation on 1 July 2009;
- (d) Part 5 —
  - (i) comes into operation on 1 July 2012, immediately after the *Pay-roll Tax Assessment Amendment Act 2010* Part 2 Division 3 comes into operation, if assent day is not later than 1 July 2012; or
  - (ii) is deemed to have come into operation on 1 July 2012, immediately after the *Pay-roll Tax Assessment Amendment Act 2010* Part 2 Division 3 comes into operation, if assent day is later than 1 July 2012;
- (e) the rest of the Act — on the day after assent day.



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## Part 2 — *Duties Act 2008* amended

### 3. Act amended

This Part amends the *Duties Act 2008*.

### 4. Section 28 amended

In section 28(6) delete “127(b),” and insert:

127(2)(d),

### 5. Section 42 amended

(1) Delete section 42(2)(b) and insert:

(b) the agreement is duty endorsed on the basis that duty has been paid or is payable at the general or a concessional rate (that is, under Schedule 2 Division 1 or 2); and

(c) duty would, but for this section, be chargeable on the transfer of the property at the rate at which duty was chargeable on the agreement.

(2) After section 42(3) insert:

(4A) If, but for this subsection, subsections (1) and (3) would both apply to the transfer of dutiable property, subsection (1) does not apply.

### 6. Section 42 amended

Before section 42(4) insert:

(4B) If an agreement for the transfer of dutiable property is duty endorsed, duty is not chargeable on the transfer of

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the property under the agreement to the purchaser in the purchaser's capacity as —

- (a) a trustee of a unit trust scheme if —
  - (i) the purchaser is an individual and is the sole unit holder in the unit trust; or
  - (ii) the purchaser is a unit holder in the unit trust and is related, as referred to in section 43(1)(a), (b), (c), (d) or (e), to each of the other unit holders;

or

- (b) a trustee, other than a trustee of a discretionary trust or a unit trust scheme, if the beneficiary and the purchaser are related as referred to in section 43(1)(a), (b), (c), (d) or (e).

(4C) A reference in subsection (4B) to a unit holder or to a beneficiary is limited to a reference to a unit holder or beneficiary whose interest in the scheme or trust is a beneficial interest.

**7. Section 43 amended**

In section 43(4)(c) delete “unless the beneficiary and the trustee are also related.” and insert:

unless —

- (i) the purchaser and the transferee are related as referred to in subsection (1)(a), (b), (c), (d) or (e); and
- (ii) the purchaser and the beneficiary are related as referred to in subsection (1)(a), (b), (c), (d) or (e).

**8. Section 127 replaced**

Delete section 127 and insert:

**127. Some transfers etc. of dutiable property from superannuation fund to member, dependant or representative**

- (1) In this section, each of these terms has the meaning given in the Commonwealth Act section 10(1) —  
*dependant*  
*legal personal representative*
- (2) Nominal duty is chargeable in respect of a transfer of, or an agreement for the transfer of, dutiable property from the trustee of a superannuation fund to —
- (a) a member of the fund; or
  - (b) where the member has died — a dependant of, or the legal personal representative of, the member,
- if —
- (c) the member was a member of the fund when the property first became part of the fund; and
  - (d) the unencumbered value of the property transferred does not exceed the value of the member's interest in the fund; and
  - (e) there is, or will be, no consideration for the transfer or agreement.

**9. Section 138 amended**

In section 138(1) after “the same” insert:

or other

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**10. Section 148 amended**

In section 148 insert in alphabetical order:

*related person* has the meaning given in section 162;

**11. Section 161 amended**

In section 161 delete the definition of *related person*.

Note: The heading to section 161 is to read:

**Term used**

**12. Section 164 amended**

In section 164:

(a) in paragraph (a)(ii) delete “interest;” and insert:

interest; or

(b) after paragraph (a)(ii) insert:

(iii) the interest of a related person is a significant interest;

**13. Section 166 amended**

In section 166(b):

(a) delete “(3), 189(2), 190(2) or 191(2)” and insert:

(3)

(b) delete “190(1) or 192.” and insert:

189.

**14. Sections 167 and 168 replaced**

Delete sections 167 and 168 and insert:

**167. Exemption if nominal duty would be chargeable on transfer**

- (1) An acquisition, by a person (the *acquiring person*) of an interest in a landholder, is exempt if nominal duty would be chargeable on the transfer, at the time of the acquisition, by the person from whom the interest in the landholder was acquired (the *relinquishing person*) to the acquiring person of land of the landholder, or of a linked entity in respect of the landholder, as if the land were that of the relinquishing person.
- (2) If the acquiring person did not acquire the interest in the landholder from another person, the reference to the person from whom the interest in the landholder was acquired is to be read (according to what is relevant) as a reference to the or a person —
  - (a) whose interest in the landholder is decreased because of the acquisition; or
  - (b) whose interest in the landholder decreased resulting in the acquisition.

Note: An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

**168. Exemption if transfer duty would not be chargeable**

- (1) An acquisition, by a person (the *acquiring person*) of an interest in a landholder, is exempt if no duty would be chargeable, other than under Chapter 6, on the transfer, at the time of the acquisition, by the person from whom the interest in the landholder was acquired (the *relinquishing person*) to the acquiring person of land of the landholder, or of a linked entity in respect

of the landholder, as if the land were that of the relinquishing person.

- (2) If the acquiring person did not acquire the interest in the landholder from another person, the reference to the person from whom the interest in the landholder was acquired is to be read (according to what is relevant) as a reference to the or a person —
- (a) whose interest in the landholder is decreased because of the acquisition; or
  - (b) whose interest in the landholder decreased resulting in the acquisition.

Note: An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

- (3) This section does not apply to an acquisition to which section 171 applies.

**15. Section 176 amended**

After section 176(3) insert:

- (4A) An entity referred to in subsection (3) may be a landholder as a result of another application of subsection (2).

**16. Section 179 amended**

In section 179(2)(d) delete “190(1) or 192.” and insert:

189.

**17. Section 184 amended**

In section 184(2) delete “188(1), 189(2) or 191(2),” and insert:

188(1) or 189(1),

**18. Section 186 amended**

- (1) In section 186(1)(a) and (b) delete “land and chattels” and insert:

land, chattels or land and chattels (whichever is relevant)

- (2) After section 186(1) insert:

- (2A) For the purposes of subsection (1)(b), the percentage of the landholder’s interest in a linked entity that is not entitled to land in Western Australia is the percentage (of the landholder’s interest in the linked entity) that would be used in section 157 if it were to be used to determine the value of the linked entity’s entitlement to chattels in Western Australia.

**19. Section 187 amended**

In section 187(1)(a) delete “191(3); and” and insert:

189(3); and

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**20. Section 188 amended**

In section 188(1) delete “deduction is made under section 189 or 191.” and insert:

reduction is made under section 189.

**21. Sections 189 to 192 replaced**

Delete sections 189, 190, 191 and 192 and insert:

**189. Reduction for s. 188**

- (1) The amount calculated under section 188(1) is to be reduced by an amount determined by applying the appropriate rate of duty under section 184(1) to the value of the excluded interest or the sum of the values of each excluded interest.
- (2) An excluded interest is an interest of the acquirer in the landholder concerned that is —
  - (a) an interest, other than one which cannot be excluded because of subsection (4), that was held by the person or a related person, or by the person and a related person, before the day that is 3 years before the day on which the relevant acquisition occurred; or
  - (b) an interest acquired by a relevant acquisition that occurred on or after the day first referred to in paragraph (a) if duty was chargeable in respect of that acquisition, but only to the extent to which the interest is held immediately before the relevant acquisition referred to in section 188; or
  - (c) an interest in the landholder concerned acquired by an acquisition if immediately before the



acquisition neither the landholder nor a linked entity in respect of the landholder was entitled to land in Western Australia.

- (3) The value of an excluded interest is the same percentage of the value of the landholder concerned as the percentage of all interests in the landholder that is represented by the excluded interest.
- (4) An interest in the landholder acquired by an acquisition (the *earlier acquisition*) cannot be excluded under subsection (2)(a) if the relevant acquisition in respect of which duty is to be calculated under section 188(1) —
  - (a) is described in section 163; and
  - (b) was made under an arrangement entered into during the prescribed period in respect of the earlier acquisition.
- (5) The reference in subsection (4) to the prescribed period in respect of the earlier acquisition is to the period beginning on the day that is 3 years before the day on which the earlier acquisition occurred and ending on the day that is 3 years after the day on which the earlier acquisition occurred.

## 22. Section 189 amended

After section 189(5) insert:

- (6) Despite subsections (4) and (5), an interest that was held by the person or a related person, or by the person and a related person, before 1 July 2008 (the *earlier acquisition*) is an excluded interest unless the relevant acquisition in respect of which duty is to be calculated

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under section 188(1) was made pursuant to an arrangement entered into —

- (a) during the prescribed period in respect of the earlier acquisition; and
- (b) in the opinion of the Commissioner, for a purpose of avoiding or reducing the amount of duty payable.

**23. Section 204 amended**

In section 204(d) delete “190(1) or 192.” and insert:

189.

**24. Section 250 amended**

- (1) In section 250(2)(a) delete “116” and insert:

116, 117

- (2) After section 250(2) insert:

- (3A) For the purposes of subsection (2), section 116 has effect as if the requirement in section 116(2)(a) that the declaration of trust be duty endorsed or an exempt transaction were instead a requirement that duty under this Chapter was paid on the transfer of the licence for the vehicle to the trustee or was not chargeable on that transfer.

**25. Schedule 3 clause 13 deleted**

Delete Schedule 3 clause 13.

### **Part 3 — *First Home Owner Grant Act 2000* amended**

**26. Act amended**

This Part amends the *First Home Owner Grant Act 2000*.

**27. Section 7A amended**

(1) In section 7A:

(a) delete “A person” and insert:

(1) A person

(b) delete “if, on the commencement date of the transaction to which the application relates,” and insert:

if

(2) At the end of section 7A insert:

(2) The amendments to this section in the *Revenue Laws Amendment Act (No. 2) 2012* section 27(1) do not have effect in relation to a transaction with a commencement date prior to the day on which that section came into operation.

**28. Section 7B amended**

(1) In section 7B:

(a) delete “A person” and insert:

(1) A person

- (b) delete “if, on the commencement date of the transaction to which the application relates —” and insert:

if —

- (2) At the end of section 7B insert:

- (2) The amendments to this section in the *Revenue Laws Amendment Act (No. 2) 2012* section 28(1) do not have effect in relation to a transaction with a commencement date prior to the day on which that section came into operation.

**29. Section 28 amended**

- (1) In section 28(2) delete “objector,” and insert:

applicant,

- (2) Delete section 28(3) and insert:

- (3) An application for an extension of time —
  - (a) must be made within 12 months after the day on which the objection was to have been lodged under subsection (1), but may be made before or after that day; and
  - (b) must set out in detail the grounds on which the applicant asks for an extension of time.

**30. Section 29A inserted**

After section 28 insert:

**29A. Relationship with *Duties Act 2008* and *Taxation Administration Act 2003***

- (1) If, in relation to an application and a decision on the application —
- (a) the Commissioner reassesses the amount of duty chargeable under the *Duties Act 2008* on the transfer of the dutiable property to which the application relates on the basis that the transfer is not chargeable at a concessional rate of duty (under the *Duties Act 2008* Chapter 2 Part 6 Division 3); and
  - (b) notice of the reassessment is issued on a day that is after the day on which notice of the decision under this Act is given,

the 60 day period referred to in section 28(1) of this Act and the 12 month period referred to in section 28(3) of this Act are to be increased by the number of days in the period commencing on the day after the day on which notice of the decision under this Act was given and ending on the day on which notice of the reassessment was issued.

- (2) If, in relation to an application and a decision on the application —
- (a) an applicant has made an objection to the decision under section 27; and
  - (b) the Commissioner reassesses the amount of duty chargeable under the *Duties Act 2008* on the transfer of the dutiable property to which the application relates on the basis that the transfer is not chargeable at a concessional rate

of duty (under the *Duties Act 2008* Chapter 2 Part 6 Division 3),

the applicant is taken to have lodged an objection under the *Taxation Administration Act 2003* to the reassessment.

- (3) If an applicant is, by subsection (2), taken to have lodged an objection under the *Taxation Administration Act 2003*, the objection is —
- (a) taken to comply with the requirements of section 35 and section 36(1) or (2) of that Act; and
  - (b) taken to have been lodged on the later of —
    - (i) the day on which the objection to the Commissioner's decision on the application is lodged under this Act; and
    - (ii) the day on which notice of a reassessment of duty chargeable under the *Duties Act 2008* on the transfer is issued.
- (4) If, in relation to an application and a decision on the application —
- (a) an applicant has made an application under section 28(2) of this Act for an extension of time for lodging an objection to the decision; and
  - (b) the decision means that the transfer of the dutiable property to which the application relates is not chargeable at a concessional rate of duty (under the *Duties Act 2008* Chapter 2 Part 6 Division 3),

then, if the extension of time is granted, and the applicant makes an objection to the decision under section 27 of this Act, subsection (2) has effect in

relation to the *Duties Act 2008* and the *Taxation Administration Act 2003* despite the applicant not having made an application under the *Taxation Administration Act 2003* section 36(5) for an extension of time for lodging an objection to any reassessment that the Commissioner has made, or will make, of duty chargeable on the transfer.

- (5) If, in relation to an application and a decision on the application —
- (a) an applicant has made an objection to the decision under section 27; and
  - (b) the Commissioner reassesses the amount of duty chargeable under the *Duties Act 2008* on the transfer of the dutiable property to which the application relates on the basis that the transfer is not chargeable at a concessional rate of duty (under the *Duties Act 2008* Chapter 2 Part 6 Division 3); and
  - (c) notice of the reassessment is issued on a day that is after the day on which the applicant made the objection referred to in paragraph (a),

the 90 day and 120 day periods referred to in section 30A are to be increased by the number of days in the period commencing on the day after the day on which the objection was lodged with the Commissioner under this Act and ending on the day on which notice of the reassessment was issued.

- (6) If, in relation to an application and a decision on the application, an applicant —
- (a) makes an objection to the decision under section 27; and
  - (b) makes an objection under the *Taxation Administration Act 2003* to any reassessment that the Commissioner has made, or will make,

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of duty chargeable under the *Duties Act 2008* on the transfer of the dutiable property to which the application relates,

the objection under the *Taxation Administration Act 2003* is taken to have been lodged on the day determined under subsection (3)(b).

- (7) If a term used in this section is given a meaning in the *Duties Act 2008* or the *Taxation Administration Act 2003*, it has the same meaning in this section unless the contrary intention appears.
- (8) In this section, a reference to the transfer of dutiable property includes a reference to an agreement for the transfer of the property.

**31. Section 30A inserted**

After section 29 insert:

**30A. Time limit for making decision on objection**

- (1) The Commissioner must make a decision on an objection within the decision period calculated under subsection (2).
- (2) The decision period is the initial period of 90 days beginning on the day the objection is lodged with the Commissioner, plus the number of days equal to the number of days the Commissioner needs (whether the needed days fall during or after the initial 90 day period) —
  - (a) to obtain from the objector information that the Commissioner reasonably requires to make a decision on the objection; or



- (b) to consider any information provided by the objector after the objection was lodged; or
  - (c) to obtain any advice and assistance from an external agency that the Commissioner reasonably requires to make a decision on the objection.
- (3) The Commissioner must notify the objector, before the end of the initial 90 day period, of any periods by which the decision period has been extended up to the time of notification and, if further delays extending the decision period occur after the initial notification, must keep the objector reasonably informed about the extent and the reasons for the further delays.
- (4) If the Commissioner fails to make a decision on an objection within 120 days after the day that the objection was lodged with the Commissioner, the objector may, by written notice given to the Commissioner, require the Commissioner to apply to the State Administrative Tribunal for directions as to any or all of the matters referred to in this section, including but not limited to —
  - (a) the length of the decision period;
  - (b) the time for the objector to comply with a request for information;
  - (c) the information to be provided by the objector;
  - (d) the time for the Commissioner to seek advice and assistance from an external agency.
- (5) On receiving a request under subsection (4), the Commissioner must apply to the State Administrative Tribunal for those directions within 14 days after the day on which the Commissioner was given the written notice.

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- (6) Non-compliance with subsection (1) does not invalidate a decision on an objection.

**32. Section 31 amended**

- (1) In section 31(1):

- (a) delete “An objector” and insert:

A person

- (b) after “objection” insert:

or on an application for an extension of time for lodging an objection

- (2) In section 31(2):

- (a) delete “on the objection”;  
(b) delete “the objector.” and insert:

the person.

## **Part 4 — *Land Tax Assessment Act 2002* amended**

### **33. Act amended**

This Part amends the *Land Tax Assessment Act 2002*.

### **34. Glossary clause 6 amended**

- (1) In the Glossary clause 6(3) delete “was subdivided in the financial year immediately before that year.” and insert:

was, in the financial year immediately before that year, subdivided, except if the or each subdivision in that financial year was carried out solely for the purpose of defining an area of land to be compulsorily taken or resumed.

- (2) In the Glossary after clause 6(3) insert:

- (4A) The reference in subclause (3) to the compulsory taking or resumption of land is a reference to the taking or resumption of land under an enactment relating to the compulsory acquisition of land, regardless of whether the owner of the land agreed to the taking or resumption.

- (3) In the Glossary after clause 6(4) insert:

- (5) For the purposes of subclause (4)(b), if —
- (a) the land is a lot that was created when land was subdivided in the financial year immediately before the year (the *previous financial year*); and
  - (b) the capped value of the lot can be used in determining the taxable value of the lot for the year,
- then, in determining the capped value —
- (c) the unimproved value of the land at midnight on 30 June 2008 referred to in subclause (4)(b)(i) is to

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be reduced to the same proportion that the area of the lot represents of the area of the land as at that time; and

- (d) the taxable value of the land for the previous financial year referred to in subclause (4)(b)(ii) is to be reduced to the same proportion that the area of the lot represents of the area of the land as at the beginning of 1 July in the previous financial year.

**Part 5 — *Pay-roll Tax Assessment Act 2002* amended**

**35. Act amended**

This Part amends the *Pay-roll Tax Assessment Act 2002*.

**36. Section 30 amended**

In section 30:

- (a) delete “2”;
- (b) delete “to each other within the meaning of section 50 of the Corporations Act.” and insert:

bodies corporate.

**37. Section 32 amended**

Delete section 32(1).

**38. Section 33 amended**

- (1) After section 33(1) insert:

(2A) A person has, or persons have together, a controlling interest in a business carried on by a body corporate or unincorporate if the person or persons constitute more than 50% of the board of management (by whatever name called) of the body or control the composition of that board.

- (2) In section 33(4) delete “carried on by” and insert:

carried on under

(3) Delete section 33(7) and insert:

(7) If —

- (a) 2 corporations are related bodies corporate; and
- (b) one of the corporations has a controlling interest in a business,

the other corporation has a controlling interest in the business.

**39. Section 34 amended**

In section 34(1) and (2) delete “discretion” and insert:

discretion, or a failure to exercise the power or discretion,

**40. Section 38 amended**

(1) In section 38(1):

- (a) delete “Commissioner may” and insert:

Commissioner may, by written notice,

- (b) delete “35A(3)” and insert:

35A(4)

(2) Delete section 38(2) and insert:

- (2) However, a corporation cannot be excluded from a group if it and another corporation which is a member of the group are related bodies corporate.

**41. Section 41C inserted**

At the end of Part 5 insert:

**41C. Exempt wages — DSC disability support and disability wages subsidy**

(1) In this section —

*Disability Services Commission* means the Disability Services Commission referred to in the *Disability Services Act 1993* section 6;

*disability wages subsidy* means —

- (a) a wages subsidy provided by the Commonwealth to employers who employ persons with a disability, under the Wages Subsidy Scheme carried on in accordance with the deed entitled “Disability Employment Services Deed 2010-2012”; or
- (b) a wages subsidy provided by the Commonwealth (directly or indirectly) to employers who employ persons with a disability, that is prescribed for the purposes of this definition;

*DSC disability support* means a disability service, within the meaning of paragraph (a) of the definition of *disability service* in the *Disability Services Act 1993* section 3, provided by or under an arrangement with the Disability Services Commission;

*new employee* has the meaning given in subsection (4).

(2) Wages paid or payable to or in relation to a new employee in respect of a period during the 24 months commencing on the day on which the employee first commenced employment with the employer are, or are

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to be treated as if they were, exempt from pay-roll tax if —

- (a) the employer received or was entitled to receive a disability wages subsidy in respect of the employee on or before the day on which the employee first commenced employment with the employer; or
  - (b) the employee was eligible for some form of DSC disability support on the day on which the employee first commenced employment with the employer, and the following apply —
    - (i) the employee was, on that day, of or above the minimum age necessary to engage in that employment;
    - (ii) the employee is employed and remunerated in accordance with a binding award or other industrial determination or order or an industrial agreement.
- (3) If the Commissioner is satisfied that the employer dismissed or reduced the working hours of an employee solely or primarily in anticipation of, or as a consequence of, employing the new employee —
- (a) subsection (2) is taken not to have applied to the wages paid or payable to or in relation to the new employee; and
  - (b) the Commissioner must make any reassessment necessary to give effect to this subsection.
- (4) An employee of an employer is a ***new employee*** if the employee —
- (a) commences employment with the employer on or after 1 July 2012; and
  - (b) was not an employee of the employer, or of any other employer in a group of which the



employer is a member, at any time prior to the commencement of employment referred to in paragraph (a).

- (5) Regulations prescribing a wages subsidy for the purposes of the definition of *disability wages subsidy* in subsection (1) may be made and published during a year for which the prescription is expressed to have effect.

**42. Section 45 amended**

After section 45(3) insert:

- (4) Regulations may be expressed to apply to wages paid or payable before the day on which the regulations come into operation if the application of the regulations to the wages would not adversely affect a person who is or may be liable to pay pay-roll tax on the wages.

**43. Glossary clause 1 amended**

In the Glossary clause 1 delete the definition of *business* and insert:

*business* includes —

- (a) a profession or trade; and
- (b) any other activity carried on for fee, gain or reward; and
- (c) the activity of employing one or more persons who perform duties for or in connection with another business; and
- (d) the carrying on of a trust (including a dormant trust); and

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(e) the activity of holding any money or property used for or in connection with another business, whether carried on by one person or 2 or more persons together;

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