WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

February 5, 1976

FILE NO. S-1045
TAXATION:
Homestead Exemption

Frank A. Kirk, Director
Department of Local Government Affairs
303 East Monroe Street
Springfield, Illinois 62706

Dear Mr. Kirk:

This responds to your request for an opinion concerning Public Act 79-913 which adds section 19.23-2 to the Revenue Act of 1939. (Ill. Rev. Stat. 1973, ch. 120, par. 500.23-2, as amended.) This section provides a tax exemption for certain property as follows:

"Sec. 19.23-2. In counties with less than 1,000,000 inhabitants, a homestead improvement exemption pursuant to Article IX, Section 6 of the 1970 Constitution limited to an annual maximum of $15,000 in actual value when that property is owned and used exclusively for a residential purpose upon demonstration that a proposed increase in assessed value is attributable solely to a new

> improvement of an existing structure. The amount of the exemption shall be limited to the actual value added by the new improvement up to an annual maximum of $15,000 and shall continue for 4 years from the date the improvement is completed and occupied."

You raise six questions, most of which concern the true intent and meaning of ambiguities in the statute. It is a rule of statutory construction that tax exemptions are strictly construed and all doubts resolved against an exemption. (Rogers Park Post No. 108 v. Brenza, 8 Ill. App. 2d 283; and City of Lawrenceville v. Maxwell, 6 Ill. 2d 42.) Application of this maxim will answer most of your questions.

Your first question is whether the homestead improvement exemption is applicable only to owner-occupied residences. The statute applies only when "property is owned and used exclusively for a residential purpose". Under this language it is clear that the homestead improvement exemption applies only to owner-occupied residences. Since all property is, in fact, owned by someone, any other construction would render the word "owned" meaningless.

Your second question is whether an apartment building in which some of the apartments are leased to others who use them only for residential purposes is "owned and used exclusively

for a residential purpose". In the situation you propound, while an apartment is used by a lessee for a residential purpose, such person does not own it and the owner of the apartment building, even though he resides therein, owns it for a commercial purpose. The building is thus not owned exclusively for residential purposes. An improvement to the apartment building would therefore not qualify for the exemption.

Your third question is whether the improvement of an existing residence by adding an attached garage would qualify for the exemption. The exemption is clearly applicable to "a new improvement of an existing structure". It is clear that the addition of an attached garage is an improvement to an existing structure and would qualify for the exemption.

Your fourth question is whether the improvement of an existing garage which is detached from the residence qualifies for the exemption. The Act does not define "homestead". "Homestead" has been defined as "the home, the house and the adjoining land where the head of the family dwells; the home farm. The fixed residence of the head of a family, with the land and buildings surrounding the main house". (Black's Law Dictionary 866 (4th ed. 1951).) The definition of "homestead"

in "AN ACT to exempt the homestead from forced sale, etc." (Ill. Rev. Stat. 1973, ch. 52, pars. 1 et seq.), which is "the farm or lot of land and buildings thereon * * * occupied * * * as a residence", includes all buildings on the lot. (Stevens v. Hollingsworth, 74 Ill. 202.) Therefore, a garage which is detached from the residence, being a dependent building on the lot, is within the definition of "homestead" and an improvement to it would come within the exemption. To interpret the statute otherwise would create an artificial distinction between attached and detached garages.

Your fifth question is whether, if two separate improvements are made at different times, each of which add $15,000 or more to the actual value of the property, each such improvement is to be separately considered for purposes of the homestead improvement exemption or whether the total annual exemption for both improvements is limited to $15,000 in actual value. The statute grants only one homestead improvement exemption and states that the exemption shall be limited to an annual maximum of $15,000. Any doubt or ambiguity which could possibly be read into the statute would, as discussed above, be resolved against the exemption.

Your final question is whether the Act is applicable to 1975 assessments made as of January 1, 1975, or first applicable to the 1976 assessments. The Act did not become law until September 10, 1975, after which most assessments had been completed. Statutes are presumed to operate prospectively and not retroactively unless the statutory language is so clear as to admit no other construction. (Country Mutual Ins. Co. v. Knight, 40 Ill. 2d 423.) There is no language in the statute which indicates it is retroactive. Therefore, the statute is first applicable to 1976 assessments.

Very truly yours,

ATTORNEY GENERAL