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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

April 30, 1979

FILE NO. S-1428

REVENUE:
Application of Homestead Exemption Contained in Section 19.23-1a of the Revenue Act of 1939 to Holders of Leasehold Interests

Honorable Roger W. Thompson
State's Attorney
Logan County
Room 31, Courthouse
Lincoln, Illinois 62656

Dear Mr. Thompson:

I have your letter relating to the application of new section 19.23-1a of the Revenue Act of 1939 (P.A. 80-1471, to be codified in Ill. Rev. Stat., ch. 120, par. 500.23-1a) in certain specialized leasehold situations. In the situations in question, the land is leased, but the tenants, by terms of their lease agreements, "own" the improvements. For the reasons hereinafter stated, it is my opinion that persons who have only a leasehold interest in real property, even though

they "own" the improvements under the terms of their leases, do not qualify for the limited homestead exemption provided by section 19.23-1a.

Because it provides a tax exemption, section 19.23-1a must be strictly construed. (Telco Leasing Inc. v. Allphin (1976), 63 Ill. 2d 305, 310; Small v. Prangle (1975), 60 Ill. 2d 510, 514.) Furthermore, in determining whether property falls within a statute of exemption, doubts are to be resolved in favor of taxation. Heller v. Fergus Ford, Inc. (1975), 59 Ill. 2d 576, 579.

The exemption provided by section 19.23-1a applies solely to "homestead property" which is defined therein as property "owned and used exclusively for a residential purpose". It is clear that the language of the definition relates to owner-occupied residences and not to property held by one person for the residential use of others. See, 1976 Ill. Att'y. Gen. Op. 84.

Considering the situations which you have presented, the primary question at hand is whether a lease agreement providing that improvements to the leasehold are "owned" by the lessee renders the property "owned" for purposes of section 19.23-1a. It is my opinion that it does not.

The meaning of the word "owned" can vary depending upon the nature and purpose of the statute in which it is used. (Coombs v. People (1902), 198 Ill. 586, 588; In re Application of County Collector (1976), 44 Ill. App. 3d 327, 331-332.) When applied without qualifying words to real estate, however, the word "owner" has been held to refer to the holder of fee simple title. Woodward Governor Company v. City of Loves Park (1948), 335 Ill. App. 528, 533.

For the purposes of the exemption provisions of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 500 et seq.), ownership generally relates to the holding of the fee interest in real property. (See, People v. City of Toulon (1921), 300 Ill. 408; 1976 Ill. Att'y. Gen. Op. 204.) In situations other than those in which section 26 of the Act (Ill. Rev. Stat. 1977, ch. 120, par. 507) applies, it is the holder of the fee and not the holder of a leasehold interest against whom property taxes are assessed. Furthermore, it has been held that buildings or improvements cannot be separated from the land for tax purposes even in a situation where a lessee takes a building onto the land and has a right to remove it. (In re Tax Objections v. Hutchens (1976), 34 Ill. App. 3d 1039, 1041-1042.) Therefore, con-

sidering the above factors, it is my opinion that the term "owned" used in section 19.23-1a relates to the holding of the fee interest in the property for which the homestead exemption provided therein is sought.

I note that in section 19.23-1 of the Act (Ill. Rev. Stat. 1977, ch. 120, par. 500.23-1), which provides a homestead exemption for persons 65 years or older, the General Assembly did make specific provision for the application of the exemption to persons with lease agreements similar to the ones which you have described. Considering that a strict construction must be applied to section 19.23-1a, and that the General Assembly did not use the specific language which it used in section 19.23-1, however, there is no basis for concluding that the lessees in question may take advantage of the section 19.23-1a exemption.

Very truly yours,

ATTORNEY GENERAL