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FILE NO. 94-026

REVENUE:
Homestead Improvement Exemption

Honorable William R. Hoffeditz
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123 South Jackson Street
Newton, Illinois 62448

Dear Mr. Hoffeditz:

I have your letter wherein you inquire regarding the applicability of the homestead improvement exemption provided by section 19.23-2 of the Revenue Act of 1939 (35 ILCS 205/19.23-2 (West 1992)(repealed)), and as recodified as section 15-180 of the Property Tax Code (35 ILCS 200/15-180 (West 1993 Supp.)) by Public Act 88-455, effective January 1, 1994, to properties improved with owner occupied dwellings built to replace other dwellings which were totally destroyed by a tornado. For the reasons hereinafter stated, it is my opinion that the exemption is applicable to each such property, to the extent that the rebuilding has resulted in an increase in the current assessed

valuation of the property in comparison to its assessed valuation in the year in which the damage occurred.

By way of background, you have stated that a number of homes in Jasper County were destroyed by a tornado on June 2, 1990. New homes have been built to replace the previously-existing structures. It was your predecessor's position that because the original homes were totally destroyed, the rebuilt homes did not represent "improvements" to existing structures, for purposes of the application of the homestead improvement exemption. The supervisor of assessments has followed the advice of your predecessor, and has denied applications for the exemption on this basis. The Illinois Department of Revenue has taken a contrary position, however, and has advised the supervisor of assessments to process applications for the exemption.

Section 19.23-2 of the Revenue Act of 1939, as in effect prior to January 1, 1994, provided:

> "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 * * * $30,000 beginning January 1, 1985, 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 * * * $30,000 beginning January 1, 1985, and shall continue for 4 years from the date the improvement is completed and occupied, or

> until the next following general assessment of such property, whichever is later." (Emphasis added.)

Section 19.23-2 was repealed by Public Act 88-455, effective January 1, 1994, which created the Property Tax Code (35 ILCS 200/1-1 et seq. (West 1993 Supp.)). The homestead improvement exemption, however, was continued with only minor changes in section 15-180 of the Code, which provides:

> "Homestead improvements. Homestead properties that have been improved are entitled to a homestead improvement exemption, limited to $30,000 per year in fair cash value, when that property is owned and used exclusively for a residential purpose and upon demonstration that a proposed increase in assessed value is attributable solely to a new improvement of any existing structure. The amount of the exemption shall be limited to the fair cash value added by the new improvement and shall continue for 4 years from the date the improvement is completed and occupied, or until the next following general assessment of that property, whichever is later."

Since applications for the exemption may have been made either prior to or after January 1, 1994, I will address the applicability of the exemption generally, to encompass applications made under either statutory provision.

In concluding that the exemption was not applicable, your predecessor cited Hall v. Illinois Property Tax Appeal Board (1981), 98 Ill. App. 3d 824, for the proposition that, in order for the exemption to apply, any increase in value must be solely attributable to a new improvement in an existing structure. In

Hall v. Illinois Property Tax Appeal Board, a homeowner had made extensive renovations to an existing home. There was testimony, however, that the assessed value of the property increased due to a general increase in the value of property in the area in which it was located, not because of the renovation work. The exemption was therefore denied because the increased assessment was not based solely upon the work that had been done.

In the present circumstances, there has apparently been no significant general increase in the value of property in the tornado devastated area. The increased valuation, if any, of particular properties is due solely to the fact that the homes built to replace those destroyed by the tornado are more valuable than the homes that were destroyed. The question here, unlike that in Hall v. Illinois Property Tax Appeal Board, is whether the replacement homes constitute "improvements" to existing structures, within the meaning of section 19.23-2 of the Revenue Act of 1939 and section 15-180 of the Property Tax Code, and not whether the improvements were responsible for the increase in valuation.

An "improvement" is an addition to real property amounting to more than mere repair or replacement, and which substantially enhances the value of the property. (Cates v. Hunter Engineering Co. (1990), 205 Ill. App. 3d 587; Calumet City Country Club v. Roberts Environmental Control Corp. (1985), 136

Ill. App. 3d 610.) In the Revenue Act of 1939, the General Assembly clearly intended that "improvements" were to be distinguished from "repairs", since "repair and maintenance" was defined at section 20h-1 of the Act (35 ILCS 205/20h-1 (West 1992) (repealed)), as follows:

> "* * * For purposes of this Section, work shall be deemed repair and maintenance when it (1) does not increase the square footage of improvements and does not materially alter the existing character and condition of the structure but is limited to work performed for the purpose of prolonging the life of the property, with existing improvements, or keeping such property in a well maintained condition; and (2) employs materials, such as those used for roofing or siding, whose value is not greater than the replacement value of any materials being replaced by such materials."

Similarly, section 10-20 of the Property Tax Code (35 ILCS 200/10-20 (West 1993 Supp.)), which replaced section 20h-1 of the Act, provides as follows:

> "Repairs and maintenance of residential property. Maintenance and repairs to residential property owned and used exclusively for a residential purpose shall not increase the assessed valuation of the property. For purposes of this Section, work shall be deemed repair and maintenance when it (1) does not increase the square footage of improvements and does not materially alter the existing character and condition of the structure but is limited to work performed to prolong the life of the existing improvements, or to keep the existing improvements in a well maintained condition; and (2) employs materials, such as those used for roofing or siding, whose value is not greater

> than the replacement value of the materials being replaced."

Clearly, these definitions imply that an "improvement", in contrast to "repair and maintenance", may increase the size of a structure and may materially alter its character and condition, thereby resulting in an increase in the assessed valuation of the property.

Under the circumstances you have described, an owner-occupied residence existed prior to the natural disaster. That structure had presumably been assessed for taxes in accordance with the Revenue Act of 1939, based upon the value of similar property in the area. Following the tornado, the property owner had several options. He or she could have elected to rebuild the home as it had existed prior to its destruction. In that case, there should have been no increase in the assessed valuation of the property, and, hence, no increase in the tax burden upon the owner. If, as here, however, the owner elected to replace the destroyed structure with a larger or more elaborate one, the assessed valuation of the property would have increased, and with it the amount of taxes payable by the owner.

The General Assembly, as a matter of public policy, has determined that a property owner who constructs improvements to a residence which will increase the assessed valuation of the property (in contrast to mere repairs or maintenance, which will not) should be excused from immediately assuming the additional

tax burden related thereto. The same policy should apply where, as here, a property owner rebuilds an improved residence to replace one which was a casualty of a natural catastrophe. Indeed, the policy is even more compelling in these circumstances, where the decision to improve a residence is the ultimate result of an occurrence completely outside of the control of the owner, which can hardly be characterized as a voluntary decision. There is no basis upon which to distinguish between the improvement of an existing residence, on the one hand, and the construction of a larger or a materially different residence to replace one which was destroyed by casualty, on the other.

This conclusion is further supported by the administrative interpretation accorded to section 19.23-2 of the Revenue Act of 1939 by the Illinois Department of Revenue. As previously noted, the staff of the Department has interpreted the homestead exemption as applying in these circumstances. It is well established that the interpretation placed upon a statute by an agency charged with its administration is entitled to substantial weight and deference, and constitutes an informed source for ascertaining the legislative intent. (Abrahamson v. Illinois Department of Professional Regulation (1992), 153 Ill. 2d 76, 97-8.) Unless the administrative interpretation is based upon a clearly erroneous premise, it should be followed. (See Chicago & North Western Transportation Co. v. ICC (1992), 230 Ill. App. 3d 812, 815-16.)

In my opinion, the administrative interpretation is not clearly erroneous, and it is, consequently, entitled to deference in determining the application of the homestead exemption..

Therefore, it is my opinion that the homestead improvement exemption is applicable in these circumstances, to the extent that the value of the property has been increased over its value at the time of the catastrophic event because of the improvement thereof. The difference in assessed value should be calculated as the difference between the original assessed value of the property with the old structure, and the assessed value of the property with the new, improved structure, and not as the difference between the property with no owner-occupied residence and the property with a new home.

Respectfully yours,

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