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THE latest chapter of the sad saga, "How to Kill a City," has been provided by the Appellate Division of the State Supreme Court in the case of the owners of the Seagram Building vs. The Tax Commission of the City of New York.

This decision, which establishes a new, drastically increased tax assessment policy for "prestige" buildings, may turn out to be the worst thing to hit the city, architecturally speaking, short of an atom bomb. Incredible as it seems, New York has chosen to discriminate against good building by imposing a special method of taxing architectural excellence. There is no surer way to outlaw it.

The city has done this, as the saying goes, "strictly from hunger." Its established practice is to tax a commercial building on its "market value," a figure reached on the basis of net income, capitalized at a customary 6 per cent plus 2 per cent for depreciation. (Excursions into finance are not usual Art Page fare, but the art of architecture is compounded of equal parts of esthetics and economics in a curious and uneasy blend.) By this formula, the Seagram Building comes up with a figure that hovers roughly around $17,000,000. It is no secret that this extravagantly beautiful edifice cost $36,000,000 to build. And there, as anyone can clearly see, is more than another $17,000,000 untapped by taxes, in a city starved for revenue. The apple in Eden could not have tempted the tax man more.

It is also no secret that when an investor or speculator constructs a building for profit (as another saying goes, he's not in business for his health), he puts no more into it than will earn him that profit, usually just about enough to hold its minimum quality, rentable walls together. His construction cost is pretty close to market value. From his point of view, it would be sheer madness to do anything else.

In fact, the one note that keeps recurring throughout the court decision—and we make it clear here that we are in no way commenting on the legal aspects of the case, but simply on an attitude relevant to the production of architecture—is that any other procedure can only be considered a form of corporate incompetence. The logical, legal mind holds that no successful business man with sources of expert advice would ever erect a building at greater cost than practical market value, without realizing a specific, measurable profit from his action. This patently foolish behavior must surely be able to be translated into dollars and cents in real estate investment terms, and it is, therefore, taxable.

But the effect of the ruling is depressingly clear. Obviously, no one will build a prestige structure if he is to be penalized for doing so. Nor will any builder take advantage of the carefully worked-out voluntary provisions of the new zoning law intended to produce better design and more open space in the city's new construction. He might then have a prestige building on his hands, and that could be an economic disaster. In essence, the city has decreed that there will be no relief from that stultifying spread of lowest-common-denominator mediocrity from now on. There may not even be any new prestige buildings to tax.

Crux

The crux of the whole matter seems to be that disturbing (to the city) discrepancy between a building that cost $36,000,000 and is worth, on the market, less than half that amount. That difference, in the judges' concurring opinion, "is never satisfactorily explained, and does not do much credit to the sagacity of the corporate managers."

The difference, of course, is architecture. The difference is a prosperous corporation with a sense of civic responsibility, willing to spend a great deal of money to produce a superb public monument.

Certainly Seagram has had business benefits, taxable as income. But it is quite possible to build a large, showy structure of considerably less merit and cost, that will do the job of impressing the public and swelling corporate profits just as well. Excellence is always a gratuitous and expensive gesture. Louis XIV would have been hard-pressed to explain Versailles to the City Tax Commission. It was a work of art as well as a "prestige" building and executive headquarters for the French government. Unfortunately, the source of its capital expenditures led to the Revolution, but our corporate kings build their monuments on more solid ground.

Today, the large corporation is the only possible patron for the great commissions in art and architecture that will distinguish our time. If the law discourages this, the city, and the century, will suffer. The New York Tax Commission has taken a perilous, extra-legal step into the field of architectural criticism. It may turn out to be architectural annihilation.

How?

How, then, does one tax it? How can the city remove Seagram and other superior structures from the general class of ordinary commercial buildings subject to the blanket rule of "market value" assessment? It is done by declaring these "prestige" structures a "limited specialty," based on the fact that there is a group of buildings in New York called "specialties," like the Stock Exchange or Madison Square Garden, that cannot be evaluated by the usual rental-return formula. Taxes on these buildings, because of their particular nature and functions, are figured in replacement terms, using construction or "reproduction" cost, less depreciation.

Seagram and its brothers are now to be evaluated in the same way. Construction cost is to be accepted as the building's "real" value, since it is argued that in most profit-calculated, "prudent" commercial construction the building cost and market value are reasonably close. Whether this is a fair or realistic "real" value for an office building that has not been built primarily as a speculative investment, is one of the questions to be resolved by the State Court of Appeals.

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