MINUTES OF HEARING

DEPARTMENT OF FINANCE
June 12, 1985

IN THE MATTER OF:

THE BENDIX CORPORATION
Southfield, Michigan 48037
E.I. No. 38-0341261
General Corporation Tax

BEFORE: STANLEY NOSOL
Formal Referee

FOR THE DEPARTMENT OF FINANCE: BARRY WEINER, ESQ.
Departmental Counsel

FOR THE TAXPAYER:

EDWARD R. KOCH, ESQ.
Allied Corporation
P.O. Box 1057R
Morristown, N.J. 07960

GEORGE WOLF
Hearing Reporter
THE REFEREE: This is a continuation of a formal hearing to review the tax liability of the Bendix Corporation for a general corporation tax deficiency asserted by the New York City Department of Finance for the year ending 9/30/81.

As originally set forth in the Notice of Determination dated May 12, 1983, the principal amount of the deficiency was $244,281, which with interest of $38,832 brought the original asserted deficiency to $283,113.

At the prior hearing, which was held on December 17, 1984, Mr. Weiner clarified the record and indicated that the assessment had been reduced from the original $244,281 to $96,540, which with interest computed to 5/4/83 amounting to $15,228.19 brought the total to $111,768.19.

At the conclusion of the hearing held on December 17, 1984, the hearing had been closed with the stipulation that the parties could reopen it in the event that Mr. Weiner determined that he wished to have a witness in lieu of an affidavit being submitted by the
Taxpayer.

I note for the record that on 3/5/1985, within the time frame set forth in the minutes of the December 17, 1984, hearing, Mr. Weiner requested a reopening of the hearing.

This hearing scheduled today is a result of Mr. Weiner's request for a reopening of the hearing.

I note that at today's hearing the Taxpayer is represented by Edward R. Koch, tax attorney with the Allied Corporation. Also present at today's hearing is David H. Young, counsel with the Law Department. The City is represented at today's hearing by Barry Weiner, Departmental Counsel with the New York City Department of Finance.

Since you requested the opening of the hearing, Mr. Weiner, how would you like to proceed?

MR. WEINER: Does Mr. Koch have any questions or do you want to lay any foundation in relation to Mr. Young's background?

MR. KOCH: Yes. Mr. Young is here as a witness to lay a foundation and provide
the connection that was in dispute at the
last hearing of all of the documents which
were Xeroxed from bound volumes. So perhaps
the best thing for the sake of efficiency
would be for me to first examine Mr. Young,
laying forth his background with the Taxpayer
and some of the background of the bound
volumes and then at that point perhaps Mr.
Weiner would, I am sure, have some questions.

MR. WEINER: I am agreeable to that.

THE REFEREE: Are these documents going
to be submitted as Taxpayer's exhibits?

MR. KOCH: They are already, I believe,
exhibits. As I recall the previous hearing,
before it was completed in December we had
completed all of the other aspects of the
hearing except for this one area of dispute,
which is whether the exhibits should become --
the Taxpayer wishes them to be evidence in
the hearing and Mr. Weiner objected. So what
we are really here today to resolve is whether
the exhibits should be brought into evidence
or not. Mr. Young is a witness to lay a
foundation for that.
I would also like to just state for the record on I believe April 1st of this year, April 1, 1984, Bendix Corporation was merged into Allied Corporation. So at this point there is no longer a Bendix Corporation as an entity and Allied Corporation is the successor in interest to Bendix Corporation.

THE REFEREE: That was April 1st?

MR. KOCH: It was either March 31st or April 1st. I believe it was April 1st.

THE REFEREE: Would you like to have me swear him as a witness, then?

MR. KOCH: Yes.

DAVID H. YOUNG, Witness, called on behalf of the Taxpayer, having been first duly sworn by the Referee, testified as follows:

DIRECT EXAMINATION

BY MR. KOCH:

Q Could you give us your name and your current occupation?

A My name is David H. Young. I am currently counsel in the Law Department of Allied Corporation.

Q Before being employed by Allied Corporation,
what was your prior employment?

A I was previously counsel with the office
of the general counsel of the Bendix Corporation.

Q And when did you begin working for Bendix
Corporation?

A I started working for Bendix in May of
1974.

Q And did you work for Bendix Corporation
thereafter until the time of the acquisition of
Bendix Corporation by Allied Corporation?

A Yes, I did.

Q And thereafter you immediately went to
work for Allied Corporation?

A Yes.

Q During the time you were employed in the
Law Department of Bendix Corporation, was it the
common practice of business at Bendix when a major
transaction for the purchase or sale of stock of
interest in another corporation took place for
Bendix Corporation to keep a record of such a
transaction?

A Yes, it was.

Q And what kind of a record was normally
kept?
Generally there was preparation of a bound volume for the transaction which was maintained by the then Bendix office of general counsel and currently now in the Law Department of Allied Corporation.

Q And, in fact, was such a bound volume prepared in the instance of the transaction of the purchase of the ASARCO stock by Bendix Corporation?

A Yes, it was.

Q And in the instance of the sale of that stock by Bendix Corporation back to ASARCO, was such a bound volume prepared?

A Yes.

MR. KOCH: I would like to have Exhibit 1-A and 1-B, please.

(Document handed to Mr. Koch)

Q Would you look at this, Mr. Young?

Mr. Young, could you tell us, is Exhibit 1-A the Table of Contents that is in the bound volume or I should say Xerox of the Table of Contents that is in the bound volume that relates to the purchase of ASARCO stock by Bendix in 1978?

A Yes, it is.

Q Could you also tell us, is Exhibit 1-B
in fact a Xerox copy of the bound volume that relates to the sale of the ASARCO stock back to ASARCO in 1981?

A    It is.

Q    Mr. Young, could you also tell us if during the time you were in the Law Department of the Bendix Corporation, were you one of the attorneys who was involved in transactions of the purchase of ASARCO stock and the sale of ASARCO stock?

A    I was involved to some extent, yes.

MR. KOCH: At this point I think I would say that I would feel that there is a proper foundation because Mr. Prush had previously identified all of the various documents as being the ones belonging to the Table of Contents. Mr. Young has identified the Table of Contents as in fact being the one from the bound volume.

So at this point, reserving the right to further question, if necessary, I would defer to Mr. Weiner.

CROSS EXAMINATION

BY MR. WEINER:

Q    Were you personally involved in the
preparation of the bound volumes?

A Yes, I was.

Q And how were you involved in that?

A They were handled differently in the two cases. In the case of the original purchase, I believe the bound volume was prepared in New York by Hughes, Hubbard & Reed.

In connection with that volume, I looked at the proposed Table of Contents, suggested additions, provided documentation to the law firm in New York. I ultimately received from the firm in New York a bound volume. On the side of the sale, I prepared that volume myself.

Q What was the relationship between Bendix and Hughes, Hubbard & Reed?

A Hughes, Hubbard & Reed was Bendix's outside counsel on the transaction.

Q So they represented Bendix in relation to the acquisition of ASARCO stock?

A Right.

Q And they are located in New York City?

A Yes.

MR. KOCH: May I interject for a moment?

One other thing slipped my mind at the
beginning of this hearing, and that is that
two of the exhibits, 4 and 5, represent
internal memoranda of Hughes, Hubbard & Reed,
and we have decided at their request not to
put those into evidence.

THE REFEREE: You are making a request
to withdraw them as exhibits?

MR. KOCH: If we are not putting them
into evidence we may as well withdraw them
as exhibits. I don't see a need to renumber
the rest of the exhibits, for the sake of
simplicity.

MR. WEINER: Before they are withdrawn
I would like to ask Mr. Young a couple of
questions.

THE REFEREE: How can you ask questions
if they are withdrawn. You will be referring
to exhibits that are no longer in evidence.

Why don't you ask questions off the
record and satisfy yourself before you ask the
questions on the record.

Is there testimony in the record con-
cerning these exhibits?

MR. KOCH: They are just tied into the
Table of Contents, I believe.

MR. WEINER: I can phrase my questions so they don't refer to the exhibits.

MR. KOCH: If you want to go off the record --

THE REFEREE: Do you want to go off the record or stay on the record?

MR. WEINER: Are you going to be requesting to withdraw these right now? It doesn't make a difference. I can work it either way. I have no objection to them being withdrawn.

THE REFEREE: Why don't we go off the record at this time.

(Discussion off the record)

THE REFEREE: On the record.

Mr. Weiner, do you have any objection to the Taxpayer's request to withdraw the exhibits previously marked in evidence as Taxpayer's Nos. 4 and 5?

MR. WEINER: I have no objection.

THE REFEREE: Then Taxpayer's Exhibits 4 and 5 will be returned to the Taxpayer and the record will indicate that as of this
moment there will be no Exhibit 4 or 5 in evidence.

(Taxpayer's Exhibits 4 and 5 withdrawn)

BY MR. WEINER:

Q Mr. Young, with relation to this transaction, can you tell me exactly what your involvement was with regard to the acquisition and subsequent sale of ASARCO stock?

A On the acquisition, I was involved in preparation of Securities and Exchange Commission filing. On the sale end, I was involved in the preparation of closing documents on the Bendix side in coordination with counsel for ASARCO as well as Hughes, Hubbard & Reed.

Q Hughes, Hubbard & Reed also represented Bendix in the sale?

A They assisted in the sale. There was also involvement with other people in the Bendix legal function.

MR. WEINER: I have no further questions with regard to Exhibits 1-A and B.

MR. KOCH: I have just two or three additional questions for Mr. Young as well.
REDIRECT EXAMINATION
BY MR. KOCH:

Q  Mr. Young, once the bound volumes were prepared, were they kept in the Law Department?
A  They were.

Q  And is it correct that after this controversy arose you were asked by the Tax Department to transfer them to the Tax Department?
A  I was, yes.

Q  And is that in fact what you did?
A  Yes, it is.

MR. KOCH: At this point I would ask that Exhibits 1-A and 1-B be put into evidence and reserving the right for further questioning, if necessary, I would also ask that the other documents which were previously identified and tied in by Mr. Prush into the Table of Contents of the bound volumes be entered into evidence under the business records exception.

MR. WEINER: No objection.
THE REFEREE: They will be so marked in evidence.

MR. KOCH: If all the exhibits except
for former Exhibits 4 and 5 are thereby entered into evidence, I don't think we have anything further.

MR. WEINER: I have some questions of Mr. Young, if I may.

MR. KOCH: The only problem I have with that is I believe at the end of the previous hearing we said that all other matters had been closed other than the question of providing a connection for these exhibits.

THE REFEREE: I believe you are correct. Mr. Weiner would only have a right to cross examine the witness with respect to his testimony this morning.

MR. WEINER: I believe I have a right to question him in regard to documents in evidence because his testimony was used to get them into evidence.

THE REFEREE: In what regard? No questions were asked by Mr. Koch with respect to these documents. He was called solely to establish the connection with these documents.

MR. WEINER: Well, I would request the opportunity to ask several questions relating
to them.

THE REFEREE: Mr. Koch, do you have an objection?

MR. KOCH: I believe I would object. I state for the record from my discussions I think all that Mr. Young would have to offer would corroborate what Mr. Prush and Nabholz said previously. Therefore, in the interest of efficiency and not wasting everybody's time who is present at this hearing, based on my understanding at the previous hearing, I would object.

I furthermore state that I brought Mr. Young here with that understanding and, therefore, Mr. Young has come to this hearing not with the understanding that he would be answering questions dealing with the substance of this hearing but merely laying a foundation for the exhibits.

THE REFEREE: I see on page 9 you indicate, "Except for witnesses we will bring at a later date for the purpose of establishing connection.

Mr. Weiner, I call your attention to
that statement of Mr. Koch. On 91 you say,
"May I suggest if you could possibly draft" --
I assume it is prepare a draft -- "draft and
send me a completed affidavit I will be able
to review that and alert you if the appear-
ance is actually necessary."

I am waiting for your reply.

MR. WEINER: As I said, I would like to
question Mr. Young about some of the documents
that his testimony was used to make the con-
nection in order to get them into evidence.

MR. KOCH: I would object.

THE REFEREE: In view of the stipulation
entered into at the end of the last hearing
and in view of Mr. Koch's objection, I don't
believe that I can require Mr. Young to
testify as to other matters.

MR. WEINER: I think the matters are
certainly related to his testimony. I would
like to ask some questions about how he pro-
cured the documents from Hughes, Hubbard &
Reed.

THE REFEREE: I suggest in order to
try to have a complete record you address
your question to Mr. Young and if Mr. Koch has an objection he can set it forth on the record and then I will make a determination whether we are overreaching the bounds of Mr. Young's testimony for the purpose of being present at this morning's hearing.

MR. KOCH: It is my understanding that at this point these documents have in fact been put into evidence.

THE REFEREE: Yes.

MR. KOCH: Therefore, the connection has been established. So it would seem to me that any further questioning would in fact be going beyond the establishing of a connection.

THE REFEREE: The purpose of bringing Mr. Young in was to establish a connection with these documents and you set forth on the record, after examining him, that you had no objection to these documents being marked in evidence. So what would be the purpose of your further examination of the witness at this time?

MR. WEINER: I would like to establish
where Mr. Young was when he got these docu-
ments from Hughes, Hubbard & Reed, did he
come to New York City for the purpose of
getting them, were they mailed to him. I am
trying to establish that.

MR. KOCH: I believe that would be
again getting to the substance of other ques-
tions which were dealt with in fact with Mr.
Prush when we had the previous hearing.

I recall specifically several questions
from my opposing counsel regarding Hughes,
Hubbard & Reed and the fact that they were
retained by Bendix, and I appreciate that one
of the or some of the facts opposing counsel
wants to establish about New York contacts
in this transaction are significant to the
opposing counsel, but he has previously had
the opportunity to ask Mr. Prush those ques-
tions and at the conclusion of the prior
hearing in fact we had closed off all such
proceedings except for the establishment of
the connection for these exhibits
to be put into evidence and, in fact, we
have done that already today, and again I
think that any further questioning is beyond
the purpose of holding this additional
hearing.

MR. WEINER: I believe that Mr. Prush
indicated that he wasn't really active in the
acquisition of these shares in that transaction
and I am also not sure whether Mr. Koch's
statement at 90 and my statement on 91
should be regarded as a stipulation.

MR. KOCH: I believe at the time that
hearing was concluded if my opposing counsel
had been concerned about Mr. Prush's testi-
mony and wanted to further continue this line
of questioning with a future witness, he could
have at that time stated he wanted to reserve
that right rather than having in the record
a statement that the proceedings were all
completed except for a witness to make a con-
nection to have the exhibits brought into
evidence.

I would also state that I recall at the
prior hearing my opposing counsel had been
concerned about the amount of time that the
Taxpayer was taking to put these exhibits
forth, and I think he even used the word
"overkill" and I would say at this point that
I think perhaps that that is true about the
other side.

MR. WEINER: Although Mr. Koch said
that he was finished with his case, I never
stated that I was finished with mine. I was
also under the impression that the witness
coming in was a witness who was familiar and
active with the transaction and that I would
have an opportunity to question him in regard
to the transaction.

MR. KOCH: I believe that the City
rested its case in one of the first pages of
the transcript of the hearing.

THE REFEREE: Would you call my attention
to that particular page?

MR. KOCH: Perusing the record, I can't
locate the statement offhand. However, I
would still stand on pages I believe it is 90
and 91.

MR. WEINER: There is a statement on
page 11 I made that says that concludes our
opening statement.
MR. KOCH: That may be what I recalled in the early stages of the hearing, but I would still stand on pages 90 and 91.

THE REFEREE: Mr. Weiner.

MR. WEINER: The City has not had an opportunity to present its direct case nor has it stated anywhere in the record that it will not be presenting a direct case. If necessary, I would request an adjournment and I would subpoena Mr. Young at another date if we can't proceed now.

MR. KOCH: I would point your attention to page 90 where the Referee says, "Anything further, Mr. Weiner," and Mr. Weiner says, "No further questions."

Mr. Nabholz was excused.

THE REFEREE: That's as to that witness.

MR. WEINER: Then you asked if the Taxpayer's case was concluded. I was never asked if my case was concluded.

THE REFEREE: I would think that you are standing on a technicality here Mr. Koch. Mr. Weiner has a right to reopen the hearing if we needed a witness to testify, but I don't
believe that he has limited himself to just examining the witness on one particular subject. I know that you stated, "Except for a witness we will bring at a later date for the purpose of establishing connection," and then I say Mr. Weiner is going to check whether an affidavit will suffice.

MR. KOCH: Perhaps the best thing to do at this point is I will make a formal objection at this point and we will let Mr. Weiner proceed with the understanding that we are preserving our rights and any and all of the questions he asks Mr. Young are being objected to.

THE REFEREE: Fine.

MR. KOCH: Then if I have further specific questions to ask, I will also state them.

THE REFEREE: So your objection to any further testimony of Mr. Young will be noted automatically for the record and I am overruling your objection and you can take an automatic exception to my ruling. Mr. Weiner will be allowed at this point to examine the
RECross EXAMINATION

BY MR. WEINER:

Q  Mr. Young, did you come to New York City in regard to the purchase of ASARCO stock?
A  No, I did not.
Q  Do you know which Bendix employees came to New York in regard to that?
A  No, I don't.
Q  Do you know if Mr. Agee came to New York with regard to the purchase of the ASARCO stock?
A  I don't have any personal knowledge.
Q  How about in regard to the sale of ASARCO stock? Did you personally come to New York?
A  No, I did not.
Q  Did any members of the Bendix legal staff come to New York?
A  I would expect so, but I am not certain.
Q  Do you know where the stock purchase agreement, which is Exhibit 3, Taxpayer's Exhibit 3, do you know where that was executed, the location?
A  No, I do not.
Q  You have stated that Hughes, Hubbard & Reed represented Bendix in the acquisition of the
ASARCO stock.

Do you know how long before the actual purchase Hughes, Hubbard & Reed was involved in this transaction?

A  No, I don't.

Q  Do you have any approximate knowledge?

A  I can't say.

Q  I would like you to look at Taxpayer's Exhibit 18, the stock purchase agreement between ASARCO and Bendix.

Do you have any knowledge where that was executed?

A  No, I do not.

Q  Were these part of the documents you received from Hughes, Hubbard & Reed?

A  I am not sure whether I received --

MR. KOCH: I would make an objection.

I believe Mr. Young's prior testimony is that he received the bound volume from Hughes, Hubbard & Reed and, in fact, the prior testimony has indicated that these are in fact part of that bound volume.

Q  Did Mr. Agee come to New York to negotiate the purchase of the ASARCO stock?
A  I don't know.

Q  Would you know who might be more familiar
    with these transactions, who might have personal
    knowledge of where these transactions took place?

A  Certainly Mr. Agee.

Q  Was there anybody on the legal staff of
    Bendix and who is currently with Allied who might be
    familiar with these transactions?

MR. KOCH: I have an objection here, too. My understanding was when we got into
this line of questioning we were going to
have further questions about the documents.
It seems we are getting rather far afield
at this point.

MR. WEINER: I am trying to find out
where the documents were executed.

THE REFEREE: You are asking who
would have knowledge. You are going on a
fishing expedition.

MR. WEINER: I am trying to find out
who might be a witness, who might be able to
testify to where these documents were exe-
cuted. I feel it is a legitimate question.

It is certainly relevant.
MR. KOCH: I would question whether it is relevant. Again, we are not asking questions about the documents. We are asking questions about individuals at this point.

MR. WEINER: I am asking questions about individuals who might be familiar with the circumstances pertaining to the execution of the documents.

THE REFEREE: I will allow the question, but I will also note Mr. Koch's objection to my ruling.

If you know. If you don't know, say you don't know.

MR. KOCH: Could we have the question restated at this time?

THE REFEREE: Would the reporter restate the question, please?

(Question read)

A I think there might be. Just exactly what their familiarity might be I can't really say. The person to whom I reported at Bendix was Mr. Andrew B. Samet. He in turn reported to the general counsel. The general counsel is no longer with Allied. But I can't say what Mr. Samet's knowledge of the
transaction may be.

Q    Do you know if Mr. Samet accompanied Mr. Agee to New York in regard to these transactions?

A    I don't know. I doubt it, but I don't know.

Q    Do you know if anybody on the legal staff accompanied Mr. Agee to New York?

MR. KOCH: I will again state my objection for the same reasons.

THE REFEREE: I will overrule your objection, and your objection is noted for the record.

A    Here again, all I can do is speculate.

THE REFEREE: I don't want speculation. You either know or you don't know.

THE WITNESS: I don't know.

Q    Who is the attorney at Hughes, Hubbard & Reed that was most involved in this transaction?

MR. KOCH: I state my objection for the same reasons. At this point he is asking who is involved in the transaction. He is not even making any reference to documents at all.

MR. WEINER: I will rephrase the question.
Q That may have been present when these stock purchase agreements were executed?
THE REFEREE: If you don't know, you answer you don't know.
A I don't know.
Q Who was the person at Hughes, Hubbard & Reed from whom you received the bound volume?
A I don't recall.
Q When you received these bound volumes, did they come with any memorandum? Were they accompanied by a letter from Hughes, Hubbard & Reed?
A I don't think so.
MR. WEINER: May we go off the record for a minute?
THE REFEREE: Yes. Off the record.
(Discussion off the record)
THE REFEREE: Back on the record.
BY MR. WEINER:
Q Did the Bendix legal staff prepare these stock purchase agreements?
THE REFEREE: What document are you referring to?
MR. WEINER: Exhibits 3 and 18.
A I don't believe so.
MR. KOCH: I would like to raise an objection to that question, too, because the word "prepared" is really not very clear. I think the prior testimony indicates that there was involvement in this transaction from both Hughes, Hubbard & Reed and from the in-house counsel and Law Department of Bendix. So I think the word "prepared" could probably be applied to both those. If you have questions in that regard, I would like to see a little more specificity.

THE REFEREE: I would assume both the legal staff of Bendix and Hughes, Hubbard & Reed had input into the preparation of those documents.

MR. KOCH: Exactly.

Q Do you know if Mr. John C. Fontaine had any input, who is an attorney with Hughes, Hubbard & Reed, do you know if he had any --

MR. KOCH: Where does it appear on the record?

MR. WEINER: There is a reference to the exhibits which have been withdrawn.

MR. KOCH: If you want to ask about Mr. Fontaine in connection with some of these
Young-recross

exhibits that remain and whether he had
input into preparation, I will object again
but you may proceed.

Q   Do you know if Mr. Fontaine or Mr. Garrett
J. Albert had any input into the preparation of
Taxpayer's 3 or 18?

A   I expect so, but I don't have any personal
knowledge.

MR. WEINER: I have no further
questions of Mr. Young.

THE REFEREE: Do you wish to examine
the witness further, Mr. Koch?

MR. KOCH: Let me take a moment.

THE REFEREE: We can take a five-minute
break, if you wish.

MR. KOCH: Could we do that?

THE REFEREE: We will take a five-minute
break.

(Recess)

THE REFEREE: Back on the record.

I understand as a result of the off-the-
record discussion Mr. Koch has no further
questions of the witness at this time.

However, pursuant to an understanding between
the parties which I will ask them to state on the record, it is my understanding that this hearing will be closed at this time with the right of either party to reopen within thirty days from the date that they receive a copy of today's transcript.

The right to reopen would be for the purpose of any further testimony or production of witnesses or documents which they may see fit to introduce into the record.

Is that an accurate interpretation of our understanding, Mr. Koch?

MR. KOCH: That is my understanding with the further understanding that my prior objections about additional testimony beyond the connection are on the record.

THE REFEREE: Yes. Just so the record is clarified, I have previously off the record indicated to Mr. Koch my feeling that an administrative hearing should not be hampered by strict rules of evidence or technicalities and that for the purpose of having a complete record to evaluate, I do not use technicalities to prevent the
production of either testimony or the production of documentary evidence into the record.

Again getting back to Mr. Weiner, is that your understanding again, the thirty-day stipulation, the right of either party to reopen within thirty days of receipt of today's transcript?

MR. WEINER: Yes, it is.

THE REFEREE: Then the hearing will be closed on that condition.

Hearing closed; decision reserved.

(Time noted: 11:02 a.m.)

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I certify that the foregoing is a true and accurate record of the proceedings in this matter.

[Signature]

GEORGE WOLF
REPORTER
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WITNESSES

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