STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ALLIEDSIGNAL, INC. AS SUCCESSOR-IN-INTEREST TO THE BENDIX CORPORATION	:	DECISION DTA No. 806120
for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Fiscal Years Ended September 30, 1981 and September 30, 1982.	:	

Petitioner AlliedSignal, Inc., as Successor-in-interest to The Bendix Corporation, P.O. Box 1057, Morristown, New Jersey 07962, filed an exception to the determination of the Administrative Law Judge issued on July 21, 1994. Petitioner appeared by Morrison & Foerster (Arthur R. Rosen, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Robert Tompkins, Esq., of counsel).

Petitioner submitted a brief in support of its exception, the Division of Taxation submitted a brief in opposition and petitioner filed a reply brief. Oral argument was heard on March 16, 1995, which date began the six-month period for the issuance of this decision.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUE

Whether the business presence and activities in New York State of corporations whose securities generated investment income for petitioner provide the requisite nexus for the State's tax on the investment income.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Stipulated Facts

The parties have stipulated and agreed that, for purposes of this action, the following statements shall be accepted as facts; provided, however, that either party may object to the admission of such facts into evidence on the grounds of materiality or relevance and either party may offer other further evidence not inconsistent with this stipulation. All references to exhibits have been deleted.

This matter concerns the correct amount of New York State franchise tax payable by The Bendix Corporation ("Bendix") for its fiscal years ending September 30, 1981 and September 30, 1982.

As of January 1, 1983, Bendix was acquired by and became a wholly-owned subsidiary of Allied Corporation ("Allied"). Bendix was merged into Allied as of April 1, 1985. Allied was merged into its parent, AlliedSignal Inc. ("AlliedSignal"), as of September 30, 1987. AlliedSignal, petitioner herein, is the successor-in-interest to Bendix and is liable for any New York State franchise tax assessed against Bendix for the periods in question.

On or about August 12, 1982, Bendix timely filed a New York State Corporation Franchise Tax Report, Form CT-3, for its fiscal year ending September 30, 1981. On or about August 15, 1983, Bendix timely filed a New York State Corporation Franchise Tax Report, Form CT-3, for its fiscal year ending September 30, 1982. For both of these reports, Bendix computed its New York franchise tax against an allocated entire net income basis, pursuant to Tax Law § 210.3. On both of these reports, Bendix excluded from its computation of entire net income certain income which Bendix received which the corporation believed could not, under the United States Constitution, be made subject to the franchise tax imposed by New York State.

The New York State Department of Taxation and Finance, Division of Taxation ("Division"),[1] by two notices of deficiency dated September 25, 1987, asserted franchise tax deficiencies against Bendix in the base tax amount of $494,135.00 for Bendix's fiscal year ending September 30, 1981 (the "1981 fiscal year") and in the base tax amount of $219,223.00 for Bendix's fiscal year ending September 30, 1982 (the "1982 fiscal year").

The deficiencies resulted from various adjustments made by the Division to Bendix's fiscal 1981 and fiscal 1982 franchise tax reports. Among those adjustments was the restoration to Bendix's allocated entire net income of all income Bendix had excluded therefrom as set forth above.

On or about November 23, 1987, petitioner timely filed a Request for Conciliation Conference with the Bureau of Conciliation and Mediation Services ("BCMS") of the Division, with respect to the two notices of deficiency.

A conciliation conference was held on May 12, 1988 before BCMS. On or about July 8, 1988, a Conciliation Order was issued by the conciliation conferee. The Conciliation Order sustained the two notices of deficiency in all respects.

On October 3, 1988, petitioner timely filed a petition with the Division of Tax Appeals. The petition was received by the Division of Tax Appeals on October 11, 1988. By that petition, petitioner protested the Conciliation Order and the notices of deficiency that the Conciliation Order sustained.

On February 3, 1989, the Division timely filed its answer to the petition.

In this proceeding, petitioner renews its objections to the inclusion of certain items of income in Bendix's entire net income in the calculation of Bendix's franchise tax liability for the 1981 and 1982 fiscal years. The items of income which petitioner maintains are not subject to taxation by New York State are the following:

	FYE	FYE

[1]The term "Respondent" appearing in the Stipulation of Facts has been replaced by the "Division" to comply with 20 NYCRR 3000.1(c).

	9/30/81	9/30/82
Net gains from the sale of stock or securities in:		
Asarco Inc.	$211,513,354.00	
Lockheed Corporation		$6,012,275.00
General Dynamics Corporation		70,895.00
Dividends from stock or securities in:		
Asarco Inc.	2,795,187.00	
RCA		356,004.00
Total	$214,308,541.00	$6,439,174.00

Petitioner accepts, for purposes of this proceeding, the Division's restoration to Bendix's entire net income of all items of income other than those set forth above. Petitioner also accepts, for purposes of this proceeding, all other adjustments (other than the restoration to entire net income of the income set forth above) made by the Division to Bendix's fiscal 1981 and 1982 franchise tax reports.

In 1987, the Division completed a field audit of the books and records of Bendix as they pertained to Bendix's New York franchise tax reports for fiscal years 1981 and 1982.

On field audit, the Division included the income set forth above as investment income, pursuant to Tax Law § 208.6. Further, the Division allocated this income by an adjusted investment allocation percentage pursuant to Tax Law § 210.3(b). For the 1981 fiscal year, the Division determined the adjusted New York investment allocation percentage to be 4.355%; for the 1982 fiscal year, the Division determined the adjusted New York investment allocation percentage to be 11.0085%.

Bendix was incorporated under the laws of the State of Delaware in 1929 as a manufacturer of aviation and automotive parts. Over the years, Bendix developed into a multinational corporation with activities, either directly or through subsidiaries or other operating units, in all 50 states and 22 foreign countries. Bendix's core businesses expanded along several basic lines so that by the 1970's there were four major Bendix operating groups or sectors: (a) automotive, (b) aerospace/electronics, (c) industrial/energy and (d) forest products.

At all times relevant to this proceeding, Bendix's corporate headquarters and commercial domicile were in Southfield, Michigan.

At all times relevant to this proceeding, Bendix's activities within New York State were those conducted by its International Group, a division of Bendix, at rented offices in Manhattan, and those conducted by manufacturing facilities of the following four Bendix divisions: the Electrical Components Division of Bendix's aerospace/electronics group in Sidney, New York; the Engine Products Division of Bendix's aerospace/electronics group in Sidney, New York; the Fluid Power Division of Bendix's aerospace/electronics group in Utica, New York; and the Friction Materials Division of Bendix's automotive group in Troy, New York.

Asarco Inc. ("Asarco") is a New Jersey corporation with its principal offices in New York City. Asarco is one of the world's leading producers of nonferrous metals.

Both Bendix and Asarco were corporations that did business, employed capital, owned property and maintained offices in New York State during the tax periods in issue.

From December 1977 through November 1978, Bendix acquired 20.6% of Asarco's common stock, through purchases on the open market and by purchase from Asarco.

During its 1981 fiscal year, Bendix received $2,795,187.00 in dividends from its investment in Asarco. Prior to the end of that same fiscal year, Bendix sold its Asarco stock back to Asarco, realizing a gain of $211,513,354.00.

At all times relevant to this proceeding, Bendix was not involved, either directly or indirectly, in the nonferrous metal production business, or any other business activity, in which Asarco was involved.

All statements of fact contained in the opinion of the United States Supreme Court in Allied-Signal Inc., as successor-in-interest to The Bendix Corporation v. Director, Division of Taxation (504 US 768, 112 S Ct 2251, 119 L Ed 2d 533 [1992]) are incorporated herein by reference.

All statements of fact contained in the opinion of the New York Court of Appeals in Matter of Allied-Signal Inc. v. Commissioner of Finance (79 NY2d 73, 580 NYS2d 696, 588 NE2d 731 [1991]) are incorporated herein by reference.

In or about 1981, Bendix began considering a major acquisition of a high technology company. Bendix began making open market purchases of stock in companies that Bendix viewed as potential acquisition candidates. Among these companies were RCA, Lockheed Corporation ("Lockheed") and General Dynamics Corporation ("General Dynamics").

In or about 1982, Bendix decided to attempt to acquire Martin Marietta Corporation. During its 1982 fiscal year, Bendix sold its stock in Lockheed and General Dynamics and realized capital gains of $6,012,275.00 and $70,895.00, respectively. During its 1982 fiscal year, Bendix received $356,004.00 in dividends from its investment in RCA.

During the period that Bendix held its investments in RCA, Lockheed and General Dynamics, Bendix and each of those three corporations were unrelated business enterprises. Bendix's businesses and activities had nothing to do with the businesses and activities of RCA, Lockheed or General Dynamics. Bendix did not control RCA, Lockheed or General Dynamics in any way, and RCA, Lockheed and General Dynamics did not control Bendix in any way. Bendix's investments in RCA, Lockheed and General Dynamics did not serve any function related to or benefiting Bendix's business operations.

All of Bendix's activities connected with the planning for, effectuation and management of its investments in Asarco, RCA, Lockheed and General Dynamics took place at its corporate headquarters in Southfield, Michigan.

The Division considered Bendix's dividend and capital gain income from its investments in Asarco, Lockheed, General Dynamics and RCA to be investment income within the meaning of Tax Law § 208.6. The Division included that dividend and capital gain income in its calculation of Bendix's allocated entire net income for the 1981 and 1982 fiscal years.

OPINION

The issues in this case arise in the following statutory context. Section 209(1) of Article 9-A of the Tax Law imposes an annual tax on every "domestic or foreign corporation for the privilege of exercising its corporate franchise, or of doing business, or of employing capital or of owning or leasing property in New York State in a corporate or organized capacity or of maintaining an office in New York State" (20 NYCRR 1-1.1). The tax imposed in this case was calculated on the alternative base of entire net income (Tax Law § 210[1]). The starting point for calculating entire net income is the taxpayer's Federal taxable income, with modifications, not at issue here, to Federal taxable income to determine entire net income for Article 9-A purposes. Entire net income of a corporation doing business in New York and in other jurisdictions is apportioned to New York by multiplying the taxpayer's business income by a business allocation percentage (BAP) and its investment income by an investment allocation percentage (IAP) (Tax Law § 210[3][a] and [b]). The business allocation percentage represents the proportion of the taxpayer's payroll, property and receipts attributable to New York compared to the taxpayer's payroll, property and receipts everywhere. The investment allocation percentage is determined by first applying to each of the taxpayer's securities the issuer's allocation percentage (Tax Law, § 210[3][b][1]). The issuer's allocation percentage reflects the issuer's business activities in New York (Tax Law, § 210[3][b][1]; 20 NYCRR 4-7.2[b]). The sum of each of the taxpayer's investments multiplied by the appropriate issuer's allocation percentage is then divided by the total of the taxpayer's investments, yielding the taxpayer's IAP. The important distinction between the BAP and the IAP is that the former is based on the taxpayer's activities in New York, while the latter is based on the issuer's activities in the State.

The Administrative Law Judge sustained the assessment at issue based on the Court of Appeals' decision in Matter of Allied-Signal Inc. v. Commissioner of Fin. (supra) ("Allied-Signal NYC"). Allied-Signal NYC also involved Bendix and the 1981 gain and dividends from the Asarco stock. The issue was whether this income was subject to New York City's general

corporation tax. As the Administrative Law Judge noted, the New York City tax involved in Allied Signal NYC had substantially the same provisions for taxing the investment income of nondomiciliaries as the New York State provisions involved here, i.e., the use of an investment allocation percentage based on "the degree of the New York City presence of the issuers of the securities in which the taxpayer has invested" (Matter of Allied-Signal Inc. v. Commissioner of Fin., supra, 580 NYS2d 696, 697-698). The City had imposed tax on the theory that "the absence of a unitary business relationship was not determinative when the investment income sought to be taxed was allocated to the taxing jurisdiction on the basis of the presence in that jurisdiction of the corporation which generated that income, rather than the presence of the taxpayer itself" (Matter of Allied-Signal Inc. v. Commissioner of Fin., supra, 580 NYS2d 696, 699). The Court of Appeals sustained the City's imposition of tax, stating:

> "[i]n determining whether a sufficient nexus exists between a taxing jurisdiction and the income it seeks to tax, the Supreme Court has emphasized that the inquiry should focus upon whether 'the taxing power exerted *** bears fiscal relation to the protection, opportunities and benefits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return' (Wisconsin v. J. C. Penney Co., 311 US 435, 444; see, Norfolk & Western Railway Co. v. Missouri State Tax Commission, 390 US 317, 325, n. 5). Here, it is undisputed that New York City has afforded privileges and opportunities to ASARCO. That these privileges and opportunities have contributed to ASARCO's capital appreciation and thus also inured to the benefit of all its shareholders, including Bendix, is also beyond question. [footnote omitted] Thus, we agree with the City that it has given Bendix something 'for which it can ask return,' and that consequently a sufficient nexus existed to support the City's tax" (Matter of Allied-Signal Inc. v. Commissioner of Fin., supra, 580 NYS2d 696, 701).

Petitioner argues that the tax imposed on its investment income violates the Due Process Clause. As the first element of this argument, petitioner takes exception to the Administrative Law Judge's statement that "New York State's statute is taxing the investment income received by petitioner (Bendix) from its investments in ASARCO, RCA, Lockheed and General Dynamics based upon the activities in New York State of these issuing corporations" (Determination, conclusion of law "D"). Petitioner argues that:

> "[t]he fallacy in the ALJ's conclusion is manifest from an examination of the Tax Law's own provisions and the interpretative rulings and

> regulations of the Division itself. The Legislature took pains to ensure that the tax on investment income would, in every case, properly reflect the activities of a taxpayer within the state" (Petitioner's brief in support, p. 20).

We believe that the Administrative Law Judge's statement is correct. The tax involved in this case was imposed on investment income and, according to the stipulated facts, the Division:

> "allocated this income by an adjusted investment allocation percentage pursuant to Section 210.3(b) of the Tax Law. For the 1981 fiscal year, [the Division] determined the adjusted New York investment allocation percentage to be 4.355%; for the 1982 fiscal year, [the Division] determined the adjusted New York investment allocation percentage to be 11.0085%" (Stipulation of Facts, paragraph 13).[2]

The investment allocation percentage is, as explained earlier, calculated based on the activities in New York State of the issuer of the stock (Tax Law § 210[3][b][1]; 20 NYCRR 4-7.2).[3] The fact that the issuer's allocation percentage reflects the business presence in New York of the issuer of the stock appears to us to be beyond dispute. This is what the statute provides at Tax Law § 210(3)(b)(1), the regulations provide at 20 NYCRR 4-7.2(b) and it is the way the statutory scheme is described by the commentators (see, New York Tax Service, Allocation and Apportionment, Peter L. Faber, § 25.122[3], where it is stated that "[a] corporation's issuer's allocation percentage is a figure that reflects the extent to which the issuing corporation's activities took place within New York"; Hellerstein, State Taxation of Corporate Income From

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[2] Petitioner claims that the stipulation incorrectly states that the investment allocation percentage was used for the 1982 fiscal year and that instead the business allocation percentage was in fact used (Petitioner's brief in support, p. 7). The Division responds that:

> "Tax law § 210.6 allows a taxpayer the option to treat investment income as business income, subject to the BAP . . . . The audit report indicates that the BAP was lower than the IAP. Thus the auditor gave the taxpayer the benefit of the lower business allocation percentage as allowed by the statute" (Division's brief in opposition, p. 9).

Our response to this issue is that the stipulation of facts is binding on the parties, unless justice requires a qualification, change or contradiction (20 NYCRR 3000.7[e]; Matter of Deerwood Estates, Ltd., Tax Appeals Tribunal, November 17, 1994). Petitioner has not even suggested that justice requires us to ignore the stipulation; therefore, we will address this case on the basis of the stipulated fact that the investment allocation percentage was used to apportion income to New York for both of the years at issue.)

[3] In the case of an issuer that is subject to tax under Article 9-A, the issuer's allocation percentage is the percentage of the issuer's entire capital required to be allocated to New York for the preceding year (20 NYCRR 4-7.2[1]).

Intangibles: Allied-Signal and Beyond, 48 Tax Law Review 739, 815, where it is stated "[t]he issuer's allocation percentage generally reflects the extent of the issuer's business activities in New York [and those of the corporations whose stocks and bonds it owns] rather than those of the taxpayer"; see also, Matter of Allied-Signal Inc. v. Commissioner of Fin., supra, 580 NYS2d 696, 697-698, where in discussing the similar scheme of the New York City tax, the Court stated "[u]nlike the taxpayer's BAP -- which reflects the taxpayer's own activities in the City, the taxpayer's IAP reflects the degree of New York City presence of the issuers of the securities in which the taxpayer has invested [i.e., the corporations which have generated the taxpayer's investment income] [footnote omitted]"). Therefore, we see no merit to petitioner's claim that the Administrative Law Judge's characterization of the nature of the tax at issue was erroneous.

Next, petitioner argues that there is no connection between Bendix's investment activities and New York State and that Bendix did not engage in a unitary business with Asarco, Lockheed, General Dynamics or RCA; therefore, petitioner concludes New York does not have sufficient nexus with the income at issue to impose tax.

The Court of Appeals in Allied-Signal NYC squarely addressed the issue of whether the existence of a unitary business was the exclusive means for satisfying the nexus requirement when a State seeks to tax the investment income of a nondomiciliary. The Court of Appeals concluded that the Supreme Court decisions in F.W. Woolworth Co. v. Taxation & Revenue Dept. of State of New Mexico (458 US 354), Asarco Inc. v. Idaho State Tax Commn. (458 US 307, reh denied 459 US 961) and Mobil Oil Corp. v. Commissioner of Taxes of Vermont (445 US 425) did not require such a result and that International Harvester Co. v. Wisconsin Dept. of Taxation (322 US 435) had specifically rejected the principle that the State's power to tax had to be premised on the taxpayer's own activities in the State. Relying on International Harvester, the Court in Allied-Signal NYC concluded that New York City's nexus with the issuer of the stock, as reflected by the investment allocation percentage, was sufficient to justify the imposition of the New York City tax, i.e., that the City had given Bendix something for which the City could ask in return. The something identified by the Court was the privileges and

opportunities that led to Asarco's capital appreciation and which inured to the benefit of all its shareholders, including Bendix.

After the Allied-Signal NYC decision, the Supreme Court issued Allied-Signal Inc. v. Director, Division of Taxation (supra) ("Allied-Signal NJ") which also involved Bendix and the 1981 gain from the Asarco stock. The Court held that New Jersey could not tax this income because Bendix, a nondomiciliary of New Jersey, did not have a unitary relationship with Asarco and because the Asarco stock did not serve an operational function for Bendix. Because Allied-Signal NJ does not address the basis of the Allied-Signal NYC case, i.e., International Harvester and the connections between the issuer of the stock and the state, we conclude that Allied-Signal NJ does not affect the rationale of Allied-Signal NYC.

Based on the Court of Appeals' decision in Allied-Signal NYC, we can only conclude that a unitary business was not required in this case between petitioner and Asarco, Lockheed, RCA, and General Dynamics to support this imposition of tax. Each of these issuers of stock had a connection with New York State, this connection was expressed in the investment allocation percentage of petitioner, and this connection was sufficient to support the tax imposed on the income generated by the stock issued by these corporations (Matter of Allied-Signal Inc. v. Commissioner of Fin., supra). Petitioner's contention that the taxing scheme here is indistinguishable from that involved in Allied Signal NJ, Asarco, F.W. Woolworth and Mobil Oil Corp. simply cannot stand against the Court of Appeals' decision in Allied-Signal NYC where it is so plainly stated that a tax on investment income that is based on the presence in the state of the issuer of the stock is different from the tax impositions presented in the cases relied on by petitioner.

Next, petitioner criticizes the Administrative Law Judge for relying on the Supreme Court decision in International Harvester. The Administrative Law Judge's reliance on International Harvester is correct for a number of reasons. First and foremost, the Court of Appeals relied on International Harvester to sustain the similar New York City tax.

Second, the cases relied on by petitioner, the Mobil/Allied-Signal NJ line of cases, have not dealt with the issue presented here -- whether the relationship of the State to the issuer of the stock provided sufficient nexus for the State to impose tax on the item of intangible income. Instead, the Mobil/Allied Signal NJ line of cases dealt exclusively with the question of whether the relationship between the taxpayer and the item of intangible income was sufficient to support the State's imposition of tax. There is nothing in these cases that calls into question the State's right to impose tax based on the theory approved in International Harvester (see, Hellerstein, State Taxation of Corporate Income From Intangibles: Allied-Signal and Beyond, supra, at 821).

Third, even if there appeared to be a conflict between International Harvester and the Allied-Signal NJ line of cases, the lower courts should follow the most direct precedent, leaving it to the Supreme Court to overrule its own decisions (Quill Corp. v. North Dakota, 504 US 298, concurring opinion of Justice Scalia, citing Rodriguez de Quijas v. Shearson/American Express, 490 US 477, 484). Notwithstanding petitioner's contentions, International Harvester, as recognized by the Court of Appeals in Allied-Signal NYC, is the most direct precedent because it addresses the power of a state to tax income where it has provided benefits and privileges to the corporation that produced the income.

Petitioner next argues that none of Bendix's activities with respect to its investments in Asarco, Lockheed, General Dynamics or RCA took place in New York State; therefore, petitioner urges that the Division's taxation of this income is not rationally related to Bendix's activities in the State. As the Administrative Law Judge noted, the Court of Appeals addressed and disposed of this argument in Allied-Signal NYC:

> "[t]he obvious fallacy in petitioner's argument is that the premise upon which it is based -- that the tax imposed here had to be fairly related to Bendix's (i.e., the taxpayer's) own activities within the City -- simply has no basis in either logic or precedent. If a tax is properly premised on the presence in the taxing jurisdiction of an entity other than the taxpayer (as we have concluded that the tax at issue here was), common sense would seem to dictate that the tax must be fairly related to that entity's activities within the taxing jurisdiction -- not the taxpayer's" (Matter of Allied Signal Inc. v. Commissioner of Fin., supra, 580 NYS2d 696, 702-703).

Next, petitioner argues that:

> "[e]ven assuming arguendo that it is the activities of the corporation in which Bendix invested -- rather than the activities of Bendix itself -- that are relevant for determining whether New York State's taxation of Bendix's investment income satisfies the 'rational relationship' test, it is plain that New York State's scheme for taxing investment income flunks that test" (Petitioner's brief in support, p. 44).

Petitioner argues that because "it is the composition of the taxpayer's overall investment portfolio that determines the amount of tax due; there is no direct correspondence between an issuer's allocation percentage and the amount of income received by the taxpayer that is taxed in New York State" (Petitioner's brief in support, p. 45).

We agree with the Division that through this argument petitioner is challenging the facial constitutionality of the statute, i.e., petitioner is claiming that the apportionment formula cannot result in a constitutional application of the tax. In other words, particular facts are not relevant to the resolution of the issue (see, Matter of Rollins Environmental Servs. [NJ], Tax Appeals Tribunal, September 15, 1994).[4] We do not have jurisdiction to rule on the facial constitutionality of the statute (Matter of Fourth Day Enter., Tax Appeals Tribunal, October 27, 1988). At this level, the facial constitutionality of the statute must be presumed.

If petitioner's argument were to be construed to be that the formula utilized to apportion its investment income resulted in an unconstitutional application, petitioner would lose because petitioner has not met its heavy burden of showing, by clear and cogent evidence, that New York "has applied a method [of apportionment] which, albeit fair on its face, operates so as to reach profits which are in no just sense attributable to transactions within its jurisdiction" (Matter of British Land [Maryland] v. Tax Appeals Tribunal, 85 NY2d 139, 623 NYS2d 772, quoting Hans Rees' Sons v. State of N. Carolina ex rel Maxwell, 283 US 123, 134). Other than the fact that Asarco had its principal offices in New York City, the record before us indicates nothing about the activities of Asarco, RCA, Lockheed, or General Dynamics in New York

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[4]The Division contends that all of petitioner's arguments involve the facial constitutionality of the statute. We disagree. In our view, the other challenges raised by petitioner each involve the application of the statute to petitioner's particular facts and, thus, raise issues of the constitutionality of the statute as applied, issues over which we have jurisdiction (Matter of Rollins Environmental Services [NJ], supra).

State and outside of New York during the years at issue. Without specific evidence comparing the activities of these corporations in New York to their activities outside the State, petitioner cannot prevail on the claim that the instant tax was imposed on extraterritorial values (see, Matter of British Land [Maryland] v. Tax Appeals Tribunal, supra; see also, Hans Rees' Sons v. State of N. Carolina ex rel. Maxwell, supra). This lack of specific evidence comparing the in-state and out-of-state activities of the corporations also means that petitioner's argument under People ex rel. Sheraton Bldgs. v. Tax Commn. (15 AD2d 142, 222 NYS2d 192, affd 13 NY2d 802, 242 NYS2d 226) and section 210(8) of the Tax Law cannot prevail.

Accordingly it is ORDERED, ADJUDGED and DECREED that:

1. The exception of AlliedSignal Inc., as Successor-In-Interest to the Bendix Corporation is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of AlliedSignal Inc., as Successor-In-Interest to the Bendix Corporation is denied; and

4. The notices of deficiency dated September 25, 1987 are sustained.

DATED: Troy, New York
August 31, 1995

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Donald C. DeWitt
Donald C. DeWitt
Commissioner