

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert Gold :
Officer of Robert Daniels, Inc. : AFFIDAVIT OF MAILING
:
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the Period :
9/1/74-2/28/80. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of July, 1984, he served the within notice of Decision by certified mail upon Robert Gold, Officer of Robert Daniels, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Gold
Officer of Robert Daniels, Inc.
c/o Berkowitz
3345 Blair Dr.
Los Angeles, CA 90068

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
31st day of July, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert Gold :
Officer of Robert Daniels, Inc. : **AFFIDAVIT OF MAILING**
:
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 9/1/74-2/28/80. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of July, 1984, he served the within notice of Decision by certified mail upon Fred Dear, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fred Dear
Pill, Dear & Co.
55 Bleeker St.
Millburn, NJ 07041

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
31st day of July, 1984.

David Parchuck

James P. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 31, 1984

Robert Gold
Officer of Robert Daniels, Inc.
c/o Berkowitz
3345 Blair Dr.
Los Angeles, CA 90068

Dear Mr. Gold:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Fred Dear
Pill, Dear & Co.
55 Bleeker St.
Millburn, NJ 07041
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ROBERT GOLD,	:	DECISION
AS OFFICER OF ROBERT DANIELS, INC.	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period September 1, 1974	:	
through February 28, 1980.	:	

Petitioner, Robert Gold, as officer of Robert Daniels, Inc., c/o Berkowitz, 3345 Blair Drive, Los Angeles, California 90068, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1974 through February 28, 1980 (File No. 31473).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 21, 1983 at 9:30 A.M., with all evidence to be submitted by November 20, 1983. Petitioner appeared by Fred Dear, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the audit method used to determine the sales tax liability of Robert Daniels, Inc. was proper.

FINDINGS OF FACT

1. Petitioner was president of Robert Daniels, Inc. ("corporation") during the period in issue. The corporation offered printing services with its last business location being at 2 West 45th Street, New York City. The corporation ceased its business operation in March, 1980.

2. On August 20, 1980, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Robert Gold, as officer of the corporation. The Notice was issued as a result of a field audit of the records of the corporation and represented petitioner's personal liability under sections 1131(1) and 1133 of the Tax Law. The Notice covered the period September 1, 1974 through February 28, 1980 and asserted additional tax due of \$19,883.72, plus interest of \$4,692.14, for a total due of \$24,575.86.

3. Petitioner, on behalf of the corporation, executed three consents to extend the period of limitation for the issuance of an assessment covering the period September 1, 1974 through August 31, 1977. The last extended the period to December 20, 1980.

4. As a result of a pre-hearing conference held, the Audit Division reduced petitioner's additional tax due to \$17,744.96.

5. The Audit Division reviewed the corporation's nontaxable sales made for the period December 1, 1976 through November 30, 1977. It found that \$50,017.00 in sales, or 7.55797 percent of gross sales, were not supported by any resale or other exemption certificate. The Audit Division applied 7.55797 percent to the corporation's gross sales reported in the audit period and determined additional taxable sales of \$221,812.00 and tax due thereon of \$17,744.96.

6. Prior to hearing, petitioner submitted additional resale certificates from the following customers: McCalls Pattern Co., Business International Corporation and Mego Corporation.

The Audit Division reviewed the certificates submitted and redetermined the disallowed nontaxable sales to be \$30,531.00, or 4.6135 percent for the

period reviewed. The Audit Division conceded that petitioner's sales tax liability should be reduced to \$10,831.76 for the audit period.

7. Petitioner argued that the one-year period reviewed by the Audit Division was not indicative of the corporation's sales made for the entire audit period. Further, petitioner argued that the length of time from the start of audit to its conclusion precluded the acquisition of additional certificates due to the fact that some of the corporation's customers went out of business or could otherwise not be located.

8. The corporation's books and records were adequate from which the actual amount of petitioner's tax liability could be determined.

CONCLUSIONS OF LAW

A. That although there is statutory authority for use of a test period to determine the amount of tax due, resort to such method of computing tax liability must be founded upon an insufficiency of record keeping which makes it virtually impossible to verify such liability and conduct a complete audit. (Chartair, Inc. v. State Tax Commission, 65 A.D.2d 44, 411 N.Y.S.2d 41.)

B. That since the records of Robert Daniels, Inc. were adequate, the use of a one-year test period to determine tax liability over the entire audit period was improper. That petitioner's additional sales tax liability is therefore limited to the one-year period reviewed and the nontaxable sales disallowed in the amount of \$30,531.00 as redetermined in Finding of Fact "6".


C. That the petition of Robert Gold, as officer of Robert Daniels, Inc. is granted to the extent indicated in Conclusion of Law "B" above; that the Audit Division is directed to accordingly modify the Notice of Determination


and Demand for Payment of Sales and Use Taxes Due issued August 20, 1980; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 440 977 342

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Robert Gold</i>	
Street and No. <i>3345 Blair Dr.</i>	
P.O., State and ZIP Code <i>Los Angeles, CA 90068</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 440 977 343

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Fred Dear</i>	
Street and No. <i>55 Blecker St.</i>	
P.O., State and ZIP Code <i>Milburn, NJ 07041</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982