

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Seymour Kaback :  
Individually & as Officer of Weathermatic Corp. : 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 :  
12/1/68-2/28/75. :

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 6th day of January, 1983, he served the within notice of Decision by certified mail upon Seymour Kaback, Individually & as Officer of Weathermatic Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Kaback  
Individually & as Officer of Weathermatic Corp.  
340 E. 64th St.  
New York, NY

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  
6th day of January, 1984.



  
pursuant to Tax Law section 174

Authorized to administer oaths

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Seymour Kaback :  
Individually & as Officer of Weathermatic Corp. : AFFIDAVIT OF MAILING  
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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 12/1/68-2/28/75. :

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

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 6th day of January, 1983, he served the within notice of Decision by certified mail upon Allen P. Essner, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allen P. Essner  
Trubin, Sillcocks, Edelman & Knapp  
375 Park Ave.  
New York, NY 10022

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  
6th day of January, 1984.

David Paruch

Conni A. Haggard  
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 6, 1984

Seymour Kaback  
Individually & as Officer of Weathermatic Corp.  
340 E. 64th St.  
New York, NY

Dear Mr. Kaback:

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  
Allen P. Essner  
Trubin, Sillcocks, Edelman & Knapp  
375 Park Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
SEYMOUR KABACK	:	DECISION
Individually and as Officer of	:	
Weathermatic Corp.	:	
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 December 1,	:	
1968 through February 28, 1975.	:	

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Petitioner, Seymour Kaback, individually and as officer of Weathermatic Corp., 340 E. 64th Street, New York, New York, 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 December 1, 1968 through February 28, 1975 (File No. 20650).

A formal hearing was held before David Evans, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 17, 1979 at 2:00 P.M. Petitioner appeared by Trubin, Sillcocks, Edelman & Knapp, Esqs. (Allen P. Essner, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner, Seymour Kaback, is liable as a responsible officer pursuant to section 1131(1) of the Tax Law for sales and use taxes due from Weathermatic Corp. for the period December 1, 1968 through February 28, 1975.

II. Whether the notices of determination and demand for payment of sales and use taxes due were timely issued against petitioner, Seymour Kaback.

FINDINGS OF FACT

1. On June 14, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice #90,758,999) against "Weathermatic Corp., 24-01 Brooklyn-Queens Expressway, Woodside, New York 11377, Seymour Kamback (sic), Marvin Birnbaum, Paul Borodin, Jay Laudesman, David Winkler and Maxine Engel, Individually and as Officers" for the period December 1, 1968 through September 30, 1970, in the amount of \$41,611.79, with penalty and interest of \$33,611.47, for a total of \$75,223.26. The notice stated that "An audit of your records reveals that there is additional use and sales tax due. Officers' liability is determined in accordance with the provisions of Sections 1131 and 1133 of the Tax Law."

2. On June 14, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice #90,759,000) against "Weathermatic Corp., 24-01 Brooklyn-Queens Expressway, Woodside, New York 11377, Seymour Kamback (sic), Albert J. Eisenberg, Paul Borodin, David Winkler, Maxine Engel and Nina Levine, Individually and as Officers" for the period October 1, 1970 through February 28, 1975, in the amount of \$13,876.54, with penalty and interest of \$8,011.82, for a total of \$21,888.36.

3. Weathermatic Corp. timely filed a protest with respect to the above mentioned notices of determination by Wendorff, Mandell & Co., accountants and auditors. Since Weathermatic Corp. failed to perfect its petition, a default decision was entered against it on August 11, 1978.

4. On November 1, 1977, the Tax Appeals Bureau sent a letter addressed to Seymour Kaback, 340 East 64th Street, New York, New York, advising him that a pre-hearing conference regarding his liability individually and as an officer of Weathermatic Corp. would be held at the Queens District Office of the

Department of Taxation and Finance on November 22, 1977 at 10:00 A.M., affording him an opportunity to resolve the disagreement without the need for a hearing.

5. The petitioner, by his attorney, Allen P. Essner, Esq., appeared at the pre-hearing conference on November 22, 1977. The issue could not be resolved and was returned to the formal hearing unit.

6. On June 1, 1978, the Tax Appeals Bureau received a perfected petition with respect to the alleged liability of petitioner, Seymour Kaback, as an officer of Weathermatic Corp. for sales taxes due from said corporation under Notice Numbers 90,758,999 and 90,759,000. On August 2, 1978, an answer to the perfected petition was mailed to the petitioner, Seymour Kaback.

7. On December 20, 1978, the Audit Division issued two notices of assessment review (Form AU-16.6) addressed to "Seymour Kamback, officer of Weathermatic Corp., 340 E. 64th Street, New York, New York, the first revising assessment #90,758,000 from \$21,888.36 amount assessed, to adjusted tax due \$1,235.25, adjusted penalty and/or interest \$1,180.64, for a total of \$2,415.89 now due, for the period October 1, 1970 through July 21, 1971; the second, revising assessment #90,758,999 from \$75,223.26 amount assessed, to adjusted tax due \$18,849.69, adjusted penalty and/or interest, \$21,407.66, for a total of \$40,257.35 now due. It is to be noted that petitioner's name, Seymour Kaback, was spelled "Kamback". The assessment Notice Number 90,758,000 should have been 90,759,000.

8. Petitioner testified that he never received any notice with respect to any liability as an officer of Weathermatic Corp. prior to the notice dated November 1, 1977.

9. The petitioner concedes that he was a responsible officer of Weathermatic Corp. until July 27, 1971. Petitioner resigned as an officer of Weathermatic

Corp. on or about August 1, 1971 and thereafter had no association with Weathermatic Corp.

10. No evidence was offered that petitioner executed a consent to extend the period of limitation for assessment of sales and use taxes or that the returns of the Weathermatic Corp. were late filed for the period of petitioner's association with the corporation.

CONCLUSIONS OF LAW

A. That under section 1133(a) of the Tax Law, every person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected. Under section 1131(1) "(p)ersons required to collect tax" shall include any officer or employee of a corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article.

B. That, accordingly, petitioner was a person required to collect tax pursuant to sections 1131(1) and 1133(a) of the Tax Law for the period December 1, 1968 to August 1, 1971 only.

C. That no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return unless a taxpayer has consented in writing that such period be extended. Tax Law sections 1147(b) and (c).

D. That the notices of determination and demand issued against petitioner for the period December 1, 1968 to August 1, 1971 were not timely issued pursuant to section 1147(b) of the Tax Law.

E. That in accordance with Conclusions of Law "B" and "D" above, the notices of determination and demand for payment of sales and use taxes due

issued June 14, 1976 are modified insofar as the petitioner shall be deleted therefrom.

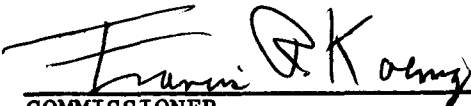
F. That the petition of Seymour Kaback is granted.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 06 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



P 470 315 039  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Allen P Eesner</i>	
Street and No. <i>375 Park Ave</i>	
P.O., State and ZIP Code <i>NY NY 10022</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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982

P 470-315 038  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Seymour Kalach</i>	
Street and No. <i>Indus'l Bldg 340 E 64 St</i>	
P.O., State and ZIP Code <i>NY NY</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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982