STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	
THE PLANT PLACE, INC., JOANNE CHIMERA, AS OFFICER OF PLANT PLACE, INC. AND JOHN CHIMERA, AS OFFICER OF PLANT PLACE, INC.	:	D E C I S I O N DTA Nos. 811473, 811474 and 811475
for Revision of Determinations or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period June 1, 1987 through May 31, 1990.	:	

Petitioners, The Plant Place, Inc., Joanne Chimera, as Officer of Plant Place, Inc. and John Chimera, as Officer of Plant Place, Inc., 1061 Niagara Falls Boulevard, Amherst, New York 14226, filed an exception to the determination of the Administrative Law Judge issued on April 25, 1996. Petitioners appeared by Damon & Morey LLP (Marc J. Hopkins, Esq., of counsel). The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Vera R. Johnson, Esq. and James Della Porta, Esq., of counsel).

Petitioners submitted a brief in support of their exception. The Division of Taxation submitted a brief in opposition. Petitioners filed a reply brief. Petitioners' request for oral argument was denied.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUES

I. Whether petitioners presented sufficient evidence to adjust the tax deficiency with respect to sales to exempt organizations, sales for resale, sales of exempt food items, sales of out-of-state deliveries and sales received through telephonic delivery associations.

II. Whether Joanne Chimera is a person responsible for the collection of sales tax.

III. Whether there is reasonable cause to abate the penalties.

FINDINGS OF FACT

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

Petitioner Plant Place, Inc. is a florist business owned by two shareholders, petitioners John and Joanne Chimera, who are married and whoeach own 50% of the shares. Joanne Chimera is the president and treasurer and John Chimera is the vice-president and secretary.

Joanne Chimera is a full-time salaried employee primarily responsible for handling customer orders. John Chimera handles the day-to-day operations of the business including managerial decisions, the maintenance of the books and records and the hiring and firing of employees.

Although Joanne Chimera had check signing authority and may have signed some tax returns during the tax periods in question, she would sign such documents at her husband's direction. Joanne Chimera would discuss the business with her husband having some input into the hiring or firing of employees; however, John Chimera was the final decision maker with respect to the running of the business. Joanne Chimera testified that she did not know what was going on with the flower shop during the period in question and that John Chimera managed the business and gave all the information to accountants concerning its finances.

The Division of Taxation ("Division") conducted an audit of The Plant Place, Inc. On September 9, 1990 and December 13, 1990, respectively, John Chimera signed a consent to extend the period of limitations for assessment of sales and use taxes on behalf of The Plant Place, Inc. for the period June 1, 1987 through August 31, 1987 until December 20, 1990 and for the period June 1, 1987 through November 30, 1987 until March 20, 1991. On March 4, 1991, James W. Bennet, the corporation's attorney at that time, signed a consent to extend the period of limitations for assessment of sales and use taxes on behalf of The Plant Place, Inc. for the period June 1, 1987 through February 29, 1988 until June 20, 1991.

In its initial appointment letter dated August 13, 1990, the Division's auditor requested The Plant Place to provide all books and records pertaining to its sales and use tax liability including journals, ledgers, sales invoices, purchase invoices, cash register tapes, Federal income tax returns, and exemption certificates. A second letter was sent on August 27, 1990 requesting the same type of books and records including invoices for recurring expenses and fixed assets, copies of all Federal corporate income tax, State franchise tax and personal income tax returns, and exemption certificates to cover all exempt sales.

The Division's auditor found the sales records of The Plant Place to be inadequate because it did not provide copies of sales invoices or a detailed receipts journal. Petitioners claimed that a majority of their sales were exempt as sales for resale or as sales to exempt organizations. Although petitioners provided the auditor with exemption and resale certificates, the auditor concluded that, because these certificates could not be reconciled with any sales invoices, exempt sales could not be verified.

In determining the amount of sales tax owed, the auditor taxed at 8% the gross sales reported on the tax returns and subtracted the amount of tax paid. Thus, the auditor disallowed all the claimed exempt sales. The auditor found tax due on additional taxable sales in the amount of $71,027.84, plus $2,679.52 in tax due on taxable recurring purchases. At hearing, petitioners' counsel stated that petitioners waived any objections they had to the Division's use tax assessment on recurring purchases.

The Division issued six notices of determination -- two notices of determination to each of the three petitioners. The notices were all dated June 11, 1991 and asserted sales and use taxes due for the period June 1, 1987 through May 31, 1990 in the amount of $73,707.36, plus penalty and interest, for the total amount of $118,447.97 in one notice and an omnibus penalty in the amount of $7,370.72 in the second notice.

After a conciliation conference, the conferee issued a conciliation order, dated September 11, 1992, to each of the petitioners sustaining the statutory notices.

Each petitioner filed a petition, dated December 9, 1992, alleging, inter alia, that the assessments pertained to sales that were exempt from tax as either sales for resale or sales to exempt organizations; that the audit test period did not accurately reflect the taxpayer's normal business tax period; and that the "taxpayer's consent to the test period audit was not knowing of the law and therefore was not informed consent."

The Division filed an answer, dated February 18, 1993, stating, inter alia, that the audit was based on a review of the books and records; that the books and records were incomplete; that there was insufficient documentation to support the claims for exemptions; that all claimed exempt sales were deemed to be taxable sales; that petitioners John and Joanne Chimera are "responsible persons" within the meaning of sections 1131 and 1133 of the Tax Law; and that the consent to the test period was proper in all respects.

At the hearing held on January 31, 1995, petitioners were granted the opportunity to present further documentation to the Division's auditor for post-hearing review and to submit such evidence into the record in the event the parties could not reach a stipulated settlement based on that evidence. On March 31, 1995, petitioners sent to the Division's counsel further documentation for the auditor's review. After several extensions, the Division responded that it objected to the post-hearing evidence submitted by petitioners and did "not concede any of the alleged facts purportedly established from this evidence." Petitioners submitted the post-hearing evidence into the record on June 16, 1995. The Division was given until July 14, 1995 to submit any rebuttal evidence. The Division did not submit any further evidence.

In their post-hearing submissions, petitioners requested adjustments for exempt sales, sales for resale, food baskets, out-of-state deliveries and telephonic deliveries. With respect to exempt sales, petitioners requested an adjustment for $220,230.00 worth of sales to exempt organizations. In support of this claim, petitioners submitted exempt organization certificates from various organizations and statements from these organizations that in a typical year they purchased on the average a certain amount of business from The Plant Place. Several of those statements were dated March of 1992 and one from the American Heart Association was

undated. Among these documents was an exempt organization certificate from the Episcopal Church Home and an invoice, dated November 15, 1988, indicating that it had purchased $615.00 worth of merchandise from The Plant Place without paying sales tax. Similarly, there was an exempt organization certificate from Temple Beth El, an undated statement from the treasurer of Temple Beth El indicating that in the average year the Temple purchases $7,500.00 worth of business from The Plant Place, and a check from Temple Beth El, dated October 22, 1990, in the amount of $544.50 to The Plant Place with respect to six invoice numbers. Petitioners also submitted a resale certificate from Ridge Dinette, dated November 10, 1988, and two invoices, dated November 9, 1988 and February 16,1990, noting that Ridge Dinette was billed, and paid to The Plant Place, $645.00 and $850.00 for merchandise purchased. With respect to these documents, the Division argues in its brief that this group of documents should be rejected because they are illegible, based on estimates and inapplicable to the period in question. The Division also states that the Episcopal Church invoices insufficiently describe the alleged nontaxable transactions.

Petitioners further requested an adjustment for $12,646.65 of sales to hospitals with an exempt organization certificate. In support of this claim, petitioners submitted an exempt organization certificate for Millard Fillmore Hospital and Millard Fillmore Suburban Hospital as well as a series of invoices concerning purchases by the two hospitals. Many of these invoices contained the month and day of the purchase but not the year of the purchase. Several of the invoices were dated outside the audit period in question. The remaining invoices contained the following dates and respective amounts:

Invoice number	Date	Amount
	7/87	$1,316.90
	8/10/87	148.00
	8/18/87	112.20
33827	9/15/87	75.20
	12/15/87	119.20
29507	4/09/87	84.95
30290	5/11/88	45.80
28212	6/01/88	91.45
28426	6/14/88	39.90
2196	7/88	288.00
32128	7/05/88	68.50
32140	7/08/88	66.70
32288	7/14/88	102.70
32299	7/17/88	100.50
32420	8/08/88	89.45
33900	9/02/88	104.95
34074	10/17/88	92.40
34663	12/01/88	63.80
	6/15/89	113.70
	6/30/90	187.20
TOTAL		$3,311.50

The following invoices contain the month and day but not the year of the sale, however, the invoice numbers are consistent with the numbers on other invoices that were dated in 1987 or 1988. These invoices contained the following amount of sales:

Invoice number	Date	Amount	Invoice number	Date	Amount
28232	6/4	75.50	33940	9/8	110.50
28345	6/6	43.10	33751	9/9	40.25
28407	6/8	109.80	33980	9/12	67.50
28388	6/11	73.00	33813	9/23	63.85
28444	6/16	82.50	33567	9/29	125.10
28466	6/20	72.10	34070	10/14	53.70
28296	6/21	71.60	34098	10/20	107.50
32255	6/28	44.50	34256	10/28	48.25
32263	6/30	79.40	34264	10/29	114.40
32278	7/2	67.75	34303	11/2	53.60
32279	7/12	110.70	34312	11/4	90.50
32317	7/21	83.80	34347	11/7	53.70
32322	7/25	86.20	34364	11/9	71.20
32339	7/28	97.95	34505	11/14	77.25
32214	7/30	76.10	34896	11/17	97.70
32430	8/4	69.20	34545	11/21	70.70
32447	8/7	29.45	34630	11/25	109.40
32460	8/9	93.20	34640	11/27	94.50
32479	8/12	108.10	34689	12/6	99.95
33101	8/17	53.40	35373	12/10	82.35
33120	8/27	85.70	35645	12/13	66.45
33134	8/26	73.00	35399	12/19	108.20
33139	8/29	86.00	36036	12/22	48.70
33150	8/30	40.40	36070	12/29	54.25
33550	9/2	61.00	36082	12/31	47.70
33913	9/3	20.50			

TOTAL: $3,851.75

With respect to these documents, the Division argues in its brief that these invoices contain "incomplete dates, appear to be duplicates and do not describe the sales transactions."

Petitioners requested an adjustment with respect to their claim that they sold $30,706.80 worth of food baskets that were exempt under Tax Law § 1115(a). Petitioners submitted a series of invoices issued to individuals, some of which were dated before the audit period in question, indicating sales of baskets of food items. In some cases the invoices would describe the item sold as a hospitality or gourmet basket, or simply list goodies, or be more specific and list items such as fruit, cheese, candy, popcorn, teas, nuts or crackers. One invoice, dated

December of 1989, indicated that 29 "gift baskets" were shipped at a total cost of $2,929.00. Included in that cost was a $174.00 shipping charge. On some invoices there was a separate charge of $3.00 or $5.00 and an 8% tax placed on that charge. In other invoices there was no separately stated charge. Fifty invoices in this group of seventy-eight invoices were dated within the audit period in question and indicated that the items contained food by referring to those items as a gourmet or hospitality basket or by specifically referring to the food items. These 50 invoices represented approximately $5,808.00 worth of merchandise. The Division argues that the items in these invoices are taxable because taxable items (the baskets) and nontaxable items (the fruit and cheese) were sold as a single unit. The Division also argues that candy baskets and "treats" baskets are taxable because "candy and confectionery" are excluded from the exemption of food items under Tax Law § 1115(a).

Petitioners requested an adjustment claiming that they had made out-of-state deliveries in the amount of $6,725.05 that were nontaxable under 20 NYCRR 526.7(e)(3)(iii), example 10. In support of this claim, petitioners submitted 28 invoices, 2 of which indicated that certain items were shipped out of state with shipping charges in the amount of $252.00 and $198.00. The other invoices contained a $6.00 shipment fee on the face of the invoice but did not state that the items were shipped out of state. However, with the exception of three invoices, at the top of the invoices were out-of-state addresses. Of the 28 invoices, 25 were dated in December of 1989, 2 were dated 1989 and 1 was undated. Petitioners also submitted a copy of the United Parcel Service's Pickup Record ("UPS record") which listed the shipping addresses and charges for items picked up from The Plant Place. The UPS record contained pickup dates in November, December and June of 1989 but did not list the value of the items shipped. In comparing the invoices with the names and addresses listed on the UPS record, only three sets of names and addresses (Mr. and Mrs. Repka, Mr. and Mrs. Lane and R. and K. Lavasseur) appear on both the invoices and the record. However, the invoice for Mr. and Mrs. Repka was dated 12/89 whereas the pickup date on the UPS record was dated 6/6/90. There were two invoices for different items ordered for Mr. and Mrs. Lane dated 12/89 and 12/20/89,

respectively, and the UPS record indicated a pickup for shipment on 12/21/89. There was an invoice, dated 12/89, for items shipped to R. and K. Lavasseur and the UPS record indicated a pickup on 12/21/89 for delivery to those persons at the same address.

The Division argues that the UPS record did not refer to the sales invoices and therefore the evidence is insufficient. Citing 20 NYCRR 533.2(b)(3), the Division asserts that the "delivery documents must reference a specific sales transaction."

Finally, petitioners requested an adjustment for transactions through three florists' telephonic delivery associations where petitioners received telephonic instructions from other florists through the associations for the delivery of flowers. Citing 20 NYCRR 526.7(e)(3)(ii), petitioners argue that the amount received from these orders are nontaxable. In support of this position petitioners submitted a yearly statement issued by Florists' Transworld Delivery Association (FTD) to The Plant Place for the years 1987 and 1988 showing that The Plant Place received incoming orders through FTD in the amount of $116,785.66 and $116,004.24, respectively. Petitioners also attached a computer printout with a run date of September 19, 1990 indicating 609 "in orders" for 1989 in the total amount of $18,883.86. On top of this printout is handwritten "FTD". Petitioners claimed that an adjustment should be made for $193,281.45 representing the amount received from FTD for orders The Plant Place received from other florists. In calculating this total amount, petitioners apparently added together the amount stated in FTD's yearly statement for 1988 ($116,004.76), one-half the amount stated in the 1987 statement ($58,392.83), and the amount of 1989 "in orders" from the computer printout ($18,883.86).

Petitioners submitted a monthly account statement from a second telephonic delivery association, Teleflora, for the month of June 1990 indicating 325 orders were sent to The Plant Place for that month in the amount of $10,165.34. Finally, petitioners submitted billing statements and Reports of Incoming Orders from Redbook Florist Services to The Plant Place for telephonic orders. The Reports of Incoming Orders and the billing statement are dated in May through November of 1989, however, there are some overlaps of the dates that appear on

the Reports of Incoming Orders and the billing statements. For example, a report dated August of 1989 and a billing statement dated August 25, 1989 both contain five recipient names and the same amounts ordered for those recipients. From a comparison of these two types of documents it becomes clear that the amounts listed on the reports are the gross dollar amounts ordered but not the amounts that The Plant Place actually received from Redbook for delivery of flowers by Plant Place in New York State. In the billing statements there is a breakdown of the amounts ordered, the amount received by The Plant Place for orders that it delivered in New York ($1,360.37), and the amount sent by The Plant Place for orders that were delivered out of state through Redbook ($3,783.600). In their request that an adjustment be made for payments Plant Place received from Redbook for flowers Plant Place delivered in New York State, petitioners totaled the gross dollar amounts from Redbook's Reports of Incoming Orders ($2,333.65) and the amounts stated as the "amount sent" which appeared at the bottom of each billing statement ($3,783.60).

In its brief, the Division argues that the evidence from the telephonic associations is insufficient to establish nontaxability under the regulations. The Division claims that the FTD orders are not itemized, that it is unclear how petitioners arrived at the FTD amount of $193,281.45, and that it is unclear how many of the orders that appear on the 1987 yearly statement took place during the audit period which began on June 1, 1987. The Division also concludes that the evidence should be rejected because there are no sales invoices substantiating the amounts indicated in the billing or monthly and yearly statements from the associations. The Division also argues in its brief that petitioner Joanne Chimera was a person responsible to collect sales tax because she was instrumental in managing the day-to-day affairs of the corporation and was president and a 50% shareholder of the corporation.

During the hearing and in their reply brief, petitioners argued that the three-year statute of limitations expired for the issuance of notices of determination to John and Joanne Chimera for the period June 1, 1987 through May 31, 1988 because the only consents to extend the limitations period were signed on behalf of The Plant Place. Petitioners also argue that Joanne

Chimera was not a responsible person required to collect tax on behalf of The Plant Place and that petitioners' failure to timely pay sales tax was due to reasonable cause and not due to willful neglect.

OPINION

In her determination below, the Administrative Law Judge addressed the evidence presented by petitioners to substantiate their claim that they were entitled to certain adjustments to the notices of determination issued to them based upon sales to (1) exempt organizations, (2) alleged sales for resale, (3) sales of exempt food items, (4) sales of out-of-state deliveries and (5) sales received through telephonic delivery associations.

With respect to claimed sales to exempt organizations, the Administrative Law Judge held that a portion of petitioners' documents were either undated or were dated outside of the audit period at issue. However, the Administrative Law Judge accepted certain documentation to substantiate sales in the amount of $1,159.50 which consisted of sales made to the Episcopal Church and to Temple Beth El, as well as sales in the amount of $7,163.25 made to the Millard Fillmore hospitals. These two adjustments resulted in reducing the tax due in the amount of $665.82.

With respect to alleged sales for resale, the Administrative Law Judge accepted documentation of sales in the amount of $1,495.00 made to Ridge Dinette which reduced the amount of tax due by an additional $119.60.

The next adjustment to petitioners' tax liability arose from claimed sales of exempt food sales. Petitioners argued that sales in the amount of $30,706.80 were exempt from sales tax because the items included food items that were exempt from sales tax under Tax Law § 1115(a)(1). However, as pointed out by the Division, since the food items were sold as a single unit with baskets, which are taxable items, the sale is subject to sales tax as a single unit (see, 20 NYCRR 527.1[b]). Yet, in analyzing the documents, the Administrative Law Judge noted that petitioners should have received credit for sales tax assessed upon certain shipping charges that were separately stated on a sales invoice in the amount of $174.00 since, during the

audit period, Tax Law former § 1101(b)(3) excluded separately stated shipping charges from sales tax. Accordingly, this adjustment further reduced the tax due by $13.92.

Petitioners also argued that certain out-of-state deliveries were nontaxable. After considering the documentation submitted by petitioners, the Administrative Law Judge concluded that petitioners substantiated three sales that were out-of-state deliveries. Also, she determined that separately stated shipping charges were erroneously taxed. Therefore, the Administrative Law Judge reduced substantiated out-of-state deliveries in the amount of $382.95 and shipping charges in the amount of $570.00 which reduced the tax due by an additional $76.24.

With respect to transactions through telephonic delivery associations, the Administrative Law Judge made adjustments to orders from Teleflora for 1990, from FTD for 1987 and 1988 and orders from Redbook for 1989. These adjustments reduced the tax due by $14,873.86.

In their exception, petitioners state that they are entitled to further reductions. However, in their brief, they have not argued wherein the Administrative Law Judge erred in her reasoning. Since the Administrative Law Judge adequately and completely addressed the issue of these certain sales in her determination, we affirm her determination on this issue for the reasons stated therein.

The next issue addressed by the Administrative Law Judge was whether consents signed on behalf of The Plant Place, Inc. to extend the three-year statute of limitations for the issuance of notices of determination also extended the limitations period for issuance of notices of determination to the responsible officers, John Chimera and Joanne Chimera. Relying on Matter of Bleistein (Tax Appeals Tribunal, July 27, 1995), the Administrative Law Judge concluded that "the only tax that can be assessed during the extended period is the tax of the taxpayer who signed the consent extending the period of limitations." Therefore, since John Chimera and Joanne Chimera did not execute consents to extend the period of limitations on their own behalf for the period June 1, 1987 through February 29, 1988, the Administrative Law

Judge cancelled the notices issued to them for this period. This issue is not before us on exception.

In considering the issue of whether Joanne Chimera was a person required to collect tax, the Administrative Law Judge reasoned that Ms. Chimera was a 50% shareholder, president and treasurer of the corporation, and a full-time salaried employee. The Administrative Law Judge concluded that although all management decisions were made by John Chimera, there was no evidence submitted by petitioners that Ms. Chimera lacked the authority to intervene in his decisions or was otherwise misled from exercising any authority, or taking any action, with respect to the sales tax. Therefore, the Administrative Law Judge determined that Joanne Chimera was a person required to collect sales tax on behalf of the corporation.

In their exception, petitioners argue that Ms. Chimera's testimony revealed that she did not believe that she had any authority to act upon the affairs of The Plant Place, Inc. In their brief, petitioners argue that Ms. Chimera had no such authority or control over the affairs of the corporation such that a designation of her as a "responsible officer" would be inappropriate. The Division argues that Ms. Chimera clearly had authority over the corporation and her failure to exercise such authority does not absolve her from liability.

Tax Law § 1133(a) imposes personal liability for taxes required to be collected under Tax Law Article 28 upon a person required to collect such tax. A person required to collect such tax is defined as "any officer, director or employee of a corporation . . . who as such officer, director, employee or manager is under a duty to act for such corporation. . . . in complying with any requirement of [article 28]" (Tax Law § 1131[1]). Whether an individual is under a duty to act for a corporation with regard to its tax collection responsibilities so that the individual would have personal liability for the taxes not collected or paid depends on the particular facts (Stacy v. State of New York, 82 Misc 2d 181, 368 NYS2d 448, 451; Matter of D & W Auto Serv. Ctr., Tax Appeals Tribunal, April 20, 1989; Matter of Autex Corp., Tax Appeals Tribunal, November 23, 1988). The question to be resolved in any particular case is whether the individual had or could have had sufficient authority and control over the affairs of the

corporation to be considered a responsible officer or employee (Matter of Constantino, Tax Appeals Tribunal, September 27, 1990). Some of the relevant factors to consider when determining responsible officer status are the authorization to hire and fire employees (Matter of Blodnick v. New York State Tax Commn., 124 AD2d 437, 507 NYS2d 536), the individual's day-to-day responsibilities, involvement with, knowledge of and control over the financial affairs and management of the corporation, the duties and functions as outlined in the certificate of incorporation and the bylaws, the preparation and filing of sales tax forms and returns (Vogel v. New York State Dept. of Taxation & Fin., 98 Misc 2d 222, 413 NYS2d 862, 865), and the payment, including the authorization to write checks on behalf of the corporation, of other creditors other than the State of New York and the United States (Chevlowe v. Koerner, 95 Misc 2d 388, 407 NYS2d 427, 429).

Other indicia include whether the person was generally permitted to manage the corporation (20 NYCRR 526.11[b][2]) and the individual's simultaneous status as an officer, director or shareholder (Matter of Cohen v. State Tax Commn., 128 AD2d 1022, 513 NYS2d 564, 565).

In this case, Joanne Chimera was a 50% shareholder, president, treasurer and a director of the corporation. The only other shareholder was her husband. She did hire employees although she never fired employees. She testified that all decisions on behalf of the corporation were discussed between herself and her husband (tr., pp. 98-99). She testified that she had check-signing authority (tr., p. 91). Petitioners' argument focuses on the fact that Joanne Chimera made no decisions on her own and even though she had check-signing authority, she signed very few checks. However, as stated in Blodnick, "the fact that petitioners did not in fact exercise their responsibilities is irrelevant" (Matter of Blodnick v. New York State Tax Commn., supra, 507 NYS2d 536, 538; see also, Matter of LaPenna, Tax Appeals Tribunal, March 14, 1991). Accordingly, we affirm the determination by the Administrative Law Judge that Joanne Chimera was a responsible officer and, thus, was required to collect sales taxes, and is personally liable for such tax.

The last issue addressed by the Administrative Law Judge concerned whether petitioners established reasonable cause and the absence of willful neglect such that penalties imposed pursuant to Tax Law § 1145(a)(1)(i) should be abated. The Administrative Law Judge stated that petitioners' reasons for their failure to fully comply with the Tax Law were equivalent to such excuses as reliance on the advice of a tax counsel or ignorance of the law and are not sufficient proof to establish reasonable cause. The Administrative Law Judge concluded that acting in good faith is insufficient to warrant an abatement of the tax penalty. Since the Administrative Law Judge dealt adequately and completely with this issue below, we affirm her determination for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of The Plant Place, Inc., Joanne Chimera, as Officer of Plant Place, Inc. and John Chimera, as Officer of Plant Place, Inc. is denied;

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

3. The petition of The Plant Place, Inc., is granted to the extent set forth in conclusions of law "A" through "E" of the Administrative Law Judge's determination, but is otherwise denied, and the petitions of Joanne Chimera, as Officer of Plant Place, Inc. and John Chimera, as Officer of Plant Place, Inc. are granted to the extent indicated in conclusions of law "A" through "E" and "G" of the Administrative Law Judge's determination, but are otherwise denied; and

4. The notices of determination as modified in accordance with paragraph "3" above are sustained.

DATED: Troy, New York
March 20, 1997

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner