

**M e m o r a n d u m****245.0290**

To: San Jose – Auditing

Date: July 21, 1967

From: Tax Counsel (GAT)

Subject: [X]

This is in regard to your memo of July 11 concerning chemicals and influenza vaccine purchased by “U”.

It is our understanding that “U” has been conducting experiments to determine whether fruit-flavored liquids containing mixtures of amino acids, vitamins, and minerals can be used safely as food for human beings. These liquids have been served to human beings as their sole diet for periods as long as 6 months. These experiments have been conducted under the supervision of a doctor.

Inasmuch as these combinations contain the basic nutritive substances of normal food and are intended to be substitute therefore, it is our opinion that they qualify as exempt food products.

It is our understanding that “U” purchases influenza vaccine for voluntary inoculation of its employees. Although a written authorization from a doctor was required for the purchase of the vaccine, no specific prescription is made or required by the doctor for the inoculation of each individual employee. The employees are inoculated with the vaccine by a nurse. Under the foregoing circumstances, it appears that “U”'s employees who desire to be so vaccinated have consented to be the patients of the doctor with whom the center contracted to prescribe and administer or supervise the administration of the vaccine. Thus, since the medicines are prescribed for the treatment of human beings by a person authorized to do so and are furnished by a licensed physician to his own patients for treatment of such patients, the sale and use of the influenza vaccines for such purpose is exempt from tax under paragraphs (1) and (2) of Section 6369.

GAT:ph [lb]