

**M e m o r a n d u m****To** : San Francisco – Auditing (LC:CFL)**Date** : December 9, 1963**From** : Tax Counsel (EHS) - Headquarters**Subject** : [B]  
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Account -- - XXXXXX

Upon review of the situation described in your memo of December 2, 1963, we are of the opinion that the sale of the baby formulas in the bottles to which are attached the collars, discs, and nipples, constitutes the sale of an exempt food item in a non-returnable container. We believe, accordingly, that no portion of the receipts from the sale are taxable whether or not the hospital resells the formula, but it is not in order, as we view it, for the taxpayer to claim a deduction of \$1.20 for each six pack sold.

This should be disallowed, but he should be given credit for the tax reported on the purchase price of the containers. The containers are, as we see the picture, purchased for resale as non-returnable containers. The fact that \$1.20 is offered to the parents of the baby upon the return of the container does not seem to us a sufficient basis to regard the container as returnable, particularly, as you state no separate account is maintained for deposits, and also because the amount is not separately stated.

E. H. Stetson

EHS:fb