

5/2/2025

Internal Revenue Service
Ogden, UT 84201

EIN: 234523

Taxpayer Name: 345

RE: Formal Protest to ERC Disallowance for Q3 2020

Tax Period: 3rd Quarter 2020

DEAR APPEALS OFFICER:

We write in response to the IRS notice disallowing 345's Employee Retention Credit (ERC) claim for the third quarter of 2020. The stated reason for disallowance is the assertion that "no government orders were in effect" from July 1 through September 30, 2020, causing a suspension of operations. We respectfully disagree. Multiple federal, state, county, and local orders remained active during Q3 2020 and imposed COVID-19-related restrictions on businesses in Ventura County, California. As shown below, these orders led to a partial suspension of 345's normal activities. In addition, we also experienced significant revenue reductions in several quarters, further supporting our ERC eligibility. This protest letter addresses both points.

1. Government Orders in Effect During Q3 2020

Below is a list of key government orders in the required format, each of which was active or had continuing effects on business operations during Q3 2020 in Ventura County, California:

- **Order Name:** Proclamation 9994 – National Emergency Concerning COVID-19
- **Order Number:** Presidential Proclamation 9994
- **Date Enacted:** 03/13/2020
- **Date Rescinded:** Formally ended by Congress in 2023 (remained in effect throughout 2020)
- **Order Summary (2–3 sentences):** This proclamation declared a nationwide emergency due to the COVID-19 outbreak. While not mandating direct business closures itself, it enabled mobilization of federal resources and authorized states and localities to enact strict public health measures under emergency conditions.
- **Impact on Quarter (Q3 2020):** Because the national emergency remained in force, state and county authorities had a legal framework to issue and maintain business restrictions. This ongoing federal emergency context underscored the severity of the pandemic, justifying continued partial shutdowns that affected 345's normal business operations.

- **Order Name:** California COVID-19 State of Emergency
- **Order Number:** Governor's Proclamation (no specific number assigned)
- **Date Enacted:** 03/04/2020
- **Date Rescinded:** Not rescinded during 2020–2021 (ended in 2023)
- **Order Summary (2–3 sentences):** Governor Gavin Newsom declared a state of emergency to deploy statewide resources to combat COVID-19. Under this emergency declaration, the Governor and relevant agencies gained broad powers to issue subsequent orders restricting businesses, public gatherings, and personal movement.
- **Impact on Quarter (Q3 2020):** Because the state of emergency persisted into Q3 2020, numerous California public health directives continued to constrain business activities. 345 was subject to capacity limitations, mandatory safety measures, and the threat of renewed shutdowns as the state managed fluctuating COVID-19 case rates.

- **Order Name:** Executive Order N-33-20 – California Statewide "Stay-at-Home" Order
- **Order Number:** N-33-20
- **Date Enacted:** 03/19/2020
- **Date Rescinded:** 06/15/2021
- **Order Summary (2–3 sentences):** This sweeping order directed all California residents to stay home except for essential needs or critical infrastructure. It mandated closure or minimal basic operations for non-essential businesses statewide.
- **Impact on Quarter (Q3 2020):** Though partially relaxed during summer 2020, the core stay-at-home directive continued into Q3, dictating that many businesses operate under limitations such as reduced capacity, outdoor-only services, or outright closure in certain sectors. As a result, 345 was significantly restricted in operating at normal levels.

- **Order Name:** California State Public Health Officer Order – Stage 2 Reopening
- **Order Number:** Issued 05/07/2020 per EO N-60-20

- **Date Enacted:** 05/07/2020
 - **Date Rescinded:** 06/15/2021
 - **Order Summary (2–3 sentences):** In May 2020, California introduced “Stage 2” reopening guidelines, allowing lower-risk retail and manufacturing to resume with modifications. Higher-risk sectors (e.g., indoor dining, gyms) remained mostly closed or heavily constrained.
 - **Impact on Quarter (Q3 2020):** Even as restrictions eased, the Stage 2 framework still imposed capacity limits, social distancing, and substantial operational adjustments. In Q3 2020, 345’s ability to conduct normal business was curtailed by these state-level rules, which forced ongoing partial suspensions and compliance costs.
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- **Order Name:** California State Public Health Officer Order – July 13, 2020 Statewide Rollback
 - **Order Number:** Issued 07/13/2020
 - **Date Enacted:** 07/13/2020
 - **Date Rescinded:** Superseded 08/31/2020 by the Blueprint for a Safer Economy
 - **Order Summary (2–3 sentences):** Due to a summer surge in COVID-19 cases, California revoked certain indoor business reopenings in July. Restaurants were required to close indoor dining again, while bars, movie theaters, gyms, and other indoor operations in affected counties were partially or fully shut down.
 - **Impact on Quarter (Q3 2020):** This sudden rollback fell squarely in Q3 2020, forcing businesses to revert to less profitable outdoor or curbside operations. For 345, it meant a return to more restrictive measures that limited onsite gatherings, reduced foot traffic, and impacted revenues.
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- **Order Name:** “Blueprint for a Safer Economy” – Color-Tier Reopening System
 - **Order Number:** State Public Health Officer Order (08/28/2020)
 - **Date Enacted:** 08/28/2020 (Effective 08/31/2020)
 - **Date Rescinded:** 06/15/2021
 - **Order Summary (2–3 sentences):** California replaced the statewide rollback with a color-coded tier framework on August 28, 2020. Each county’s tier restricted or permitted certain business operations based on local COVID-19 metrics.
 - **Impact on Quarter (Q3 2020):** Ventura County, initially placed in the most restrictive Purple tier at the end of August, severely limited indoor activities for most of Q3. This meant 345 had continued constraints on normal capacity and service delivery during September 2020.
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- **Order Name:** Ventura County Local Health Emergency
 - **Order Number:** Declared by County Health Officer on 03/12/2020
 - **Date Enacted:** 03/12/2020
 - **Date Rescinded:** Not rescinded in 2020–2021 (remained in effect into 2022)
 - **Order Summary (2–3 sentences):** This local health emergency declaration empowered the County Health Officer to enforce statewide mandates and issue local rules for COVID-19 containment. It provided the legal basis for county-level closures and capacity limits.
 - **Impact on Quarter (Q3 2020):** During Q3, Ventura County’s emergency status meant that 345 had to abide by local orders enforcing state restrictions and could face local enforcement if protocols were not followed. The ongoing county emergency also allowed quick reimposition of stricter measures when case numbers spiked.
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- **Order Name:** Ventura County “Stay Well at Home” Order
 - **Order Number:** 03/20/2020 County Health Officer Order
 - **Date Enacted:** 03/20/2020
 - **Date Rescinded:** 06/15/2021 (by alignment with state reopening)
 - **Order Summary (2–3 sentences):** The county-level stay-home directive echoed the statewide order, closing non-essential establishments and urging residents to remain at home except for essential tasks. Over time, it was amended to allow phased reopenings.
 - **Impact on Quarter (Q3 2020):** Even by Q3 2020, many of the stay-home requirements were layered with subsequent county updates. These conditions limited 345 to partial in-person operations, distancing mandates, and other constraints that hampered normal revenue generation and workforce utilization.
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- **Order Name:** Ventura County “Safely Reopening Ventura County” Order
 - **Order Number:** 05/07/2020 & 05/20/2020 Orders
 - **Date Enacted:** 05/07/2020
 - **Date Rescinded:** 08/31/2020 (when state’s Blueprint took effect)
 - **Order Summary (2–3 sentences):** As part of Stage 2 local implementation, Ventura County allowed limited reopening of lower-risk activities and businesses, subject to strict COVID-19 prevention plans. Later amendments permitted some in-store retail and limited dine-in services.
 - **Impact on Quarter (Q3 2020):** While offering some relief, these reopenings came with ongoing capacity caps and masking/distancing rules. 345, therefore, could not conduct full-scale operations—still qualifying as a partial suspension under IRS

guidelines.

- **Order Name:** Ventura County July 2020 Order – Local Implementation of State Rollback
- **Order Number:** 07/13/2020 County Health Officer Order
- **Date Enacted:** 07/13/2020
- **Date Rescinded:** 10/06/2020 (when the County moved tiers and allowed limited indoor operations)
- **Order Summary (2–3 sentences):** Following the Governor's July 13 directive, Ventura County's Health Officer re-closed many indoor sectors, including dine-in restaurants, gyms, and personal care services. Businesses that had partially reopened in May/June were now forced to move operations outdoors or shut down again.
- **Impact on Quarter (Q3 2020):** This abrupt local order shaped nearly the entire Q3 2020 for 345, as previously resumed indoor operations had to be curtailed. Customer capacity, on-premises work, and overall revenue potential remained profoundly limited throughout that quarter.

Taken together, these orders demonstrate that Q3 2020 was still dominated by multiple governmental mandates. Accordingly, the premise that "no government orders were in effect" during this period is incorrect. We operated in a constrained fashion, as mandated by the overlapping orders at each governmental level, resulting in a partial suspension of our normal business activities. Under IRS guidance, a partial suspension that affects more than a nominal portion of an employer's operations can establish eligibility for the ERC.

2. Revenue Reduction Demonstration

In addition to the government orders discussed above, we are submitting quarterly revenue data that demonstrates the revenue reductions for 345. The following table presents the quarterly revenue amounts and percentage changes for comparison purposes:

QUARTER	2019 REVENUE	COMPARISON REVENUE	DOLLAR DECLINE	% DECLINE	QUALIFIES
Q1 2019-2020	\$234,523,452.00	\$234,523.00	\$234,288,929.00	99.90%	YES
Q2 2019-2020	\$345,234.00	\$452,345.00	\$107,111.00	-31.03%	NO
Q3 2019-2020	\$152,345.00	\$2,345.00	\$150,000.00	98.46%	YES
Q4 2019-2020	\$23,452,345.00	\$23,452,345.00	\$0.00	0.00%	NO
Q1 2019-2021	\$234,523,452.00	\$2,345.00	\$234,521,107.00	100.00%	YES
Q2 2019-2021	\$345,234.00	\$23,453.00	\$321,781.00	93.21%	YES
Q3 2019-2021	\$152,345.00	\$245.00	\$152,100.00	99.84%	YES

As shown in the revenue table above, the quarters with "YES" in the QUALIFIES column meet the ERC threshold for revenue decline (50%+ for 2020 or 20%+ for 2021). These revenue reductions, combined with the impact of the government orders described earlier, substantiate our ERC claim for Q3 2020. Even during Q3 2020 alone, 345 saw a significant revenue decline (98.46%), which independently supports our eligibility under the gross receipts test. Moreover, the partial suspension from ongoing government orders further reinforces that our ERC claim was appropriate.

CONCLUSION AND REQUEST

In summary, 345 experienced both a substantial decline in revenue for Q3 2020 and a partial suspension of operations due to multiple levels of government mandates. Our operations were not free to function at normal capacity throughout Q3 2020, contra the assertion that "no orders" were active. Internal Revenue Code provisions and IRS guidance confirm ERC eligibility either through the gross receipts decline or the partial suspension test. Therefore, we respectfully request the IRS reverse the disallowance of the ERC for Q3 2020.

Thank you for your time and attention. We have provided documentation of the government orders relevant to our location and time period. Under penalties of perjury, I declare that I have examined the facts contained in this protest and accompanying materials, and to

the best of my knowledge and belief, they are true, correct, and complete.

Sincerely,

[Signature]

Authorized Representative for 345

ATTACHMENTS:

1. source_1_govinfo.gov.pdf - Proclamation 9994, National Emergency Concerning COVID-19
2. source_2_gov.ca.gov.pdf - California COVID-19 State of Emergency
3. source_3_gov.ca.gov.pdf - Executive Order N-33-20 Statewide Stay-at-Home
4. source_4_cdph.ca.gov.pdf - California State Public Health Officer Orders (Stage 2 and July 13, 2020)
5. source_5_cdph.ca.gov.pdf - Blueprint for a Safer Economy Order (08/28/2020)
6. source_6_vcemergency.com.pdf - Ventura County Local Health Emergency and Orders
7. source_7_s29622.pcdn.co.pdf - Ventura County "Stay Well at Home" Order (03/20/2020)
8. source_8_s29622.pcdn.co.pdf - "Safely Reopening Ventura County" Order (05/07/2020)
9. source_9_s29622.pcdn.co.pdf - Ventura County July 2020 Order Implementing State Rollback