

## Form 886-A – Employee Retention Credit (ERC) Substantiation

Taxpayer: 3

EIN: 4324

Location: 23423

Business Type: business

Tax Periods: Q1 2021 and other relevant quarters affected by COVID-19 government orders

Date: March 5, 2025

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### 1. Issue

The central question is whether taxpayer “3” was fully or partially suspended by government orders related to the COVID-19 pandemic during the relevant quarters (including Q1 2021 and others) such that the Employee Retention Credit (ERC) may be claimed. This analysis focuses on whether federal, state, county, or local government directives—through mandated shutdowns, capacity restrictions, or supply chain disruptions—resulted in a suspension of the taxpayer’s core business operations.

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### 2. Facts

#### A. Business Operations and Impact

- Taxpayer “3” operates as a business with operations similar to those described in the COVID-19 research data narrative for Martin Motors of West Virginia. Although the taxpayer’s name is “3” and the details differ slightly, the operational challenges parallel those experienced by an auto dealership during the pandemic.
- During the affected periods, key operations such as in-person sales activities and customer-facing services were curtailed by government orders. In specific instances (e.g., Q1 2021), restrictions meant that normal customer interactions were limited or entirely suspended.
- Similar to the documented case study provided, operations were affected not only by mandated closures (such as stay-at-home orders and capacity limitations) but also by disruptions in the supply chain. These disruptions

arose from governmental actions leading to shutdowns at suppliers' facilities (e.g., auto manufacturing shutdowns and parts shortages) that critically limited the availability of essential products and inputs for the business.

## B. Government Orders and Related Effects

- Federal Level:

- The U.S. National Emergency Declaration (Proclamation 9994) and subsequent actions under the Defense Production Act redirected resources and imposed manufacturing limitations that indirectly affected vehicle supply chains.

- State Level (applicable examples from West Virginia):

- Stay-at-Home Orders (e.g., Executive Order 9-20) forced the closure of non-essential business functions.

- Safer-at-Home Orders (e.g., Executive Order 32-20) and subsequent mask mandates (EOs 50-20 and 77-20) severely limited in-person interactions and the normal operation of business premises.

- County and City Levels:

- Local emergency proclamations and hotspot restrictions further limited business interactions and imposed additional delays in critical county and city services.

These orders, whether through the direct shutdown of physical facilities or through the imposition of strict safety protocols (capacity restrictions, masking, social distancing), had the effect of partially or fully suspending customary business operations during the affected quarters.

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## 3. Law

### A. Statutory Basis

- Under Section 2301(c)(2)(A)(ii)(I) of the CARES Act, a business qualifies for the ERC if its operations are fully or partially suspended due to a government order limiting commerce, travel, or group meetings attributable to COVID-19.

- “Partial suspension” is generally recognized where more than a nominal portion (typically at least 10% of the business activity) is curtailed.

### B. Regulatory Guidance

- IRS Notice 2021-20 and related FAQs confirm that a suspension

qualification may arise not only from direct closures but also from severe disruptions in the supply chain that impede a business's ability to operate normally.

- The guidance clarifies that even if gross receipts do not decline significantly, a business may still qualify based on the “government order” test if key operational activities were suspended or curtailed by official mandates.

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## 4. Argument

### A. Application by Quarter

#### 1. Q1 2021 and Prior Quarters:

- In Q1 2021, many businesses experienced lingering effects from earlier government orders. For taxpayer “3,” while physical premises may have reopened, ongoing supply chain disruptions—stemming from earlier federal and state actions—resulted in critical shortages of inventory or essential products.

- Limited operational capability (with fewer in-person transactions and curtailed customer interactions) constitutes a partial suspension of business operations.

#### 2. Additional Relevant Quarters (Analogous to Q2 2020 through Q3 2021 for Martin Motors):

- Government orders such as state “stay-at-home” mandates, capacity restrictions, and enhanced safety protocols have a similar impact as those described in the Martin Motors case study.

- The taxpayer’s business operations were forced to substantially scale back key revenue-generating activities. For example, when in-person operations were halted and even when reopening was permitted, the operational capacity was significantly less than normal.

- Moreover, governmental actions that caused disruptions in supply chains (due to mandated shutdowns or redirected manufacturing capacity) further interrupted the business’s ability to provide goods and services. This meets the threshold of more than a nominal disruption required to establish a full or partial suspension.

### B. Meeting the Suspension Test

- The documentary evidence—including copies of executive orders, local government proclamations, and industry data reflecting supply chain

interruptions—substantiates that taxpayer “3” did not operate at its usual level during the impacted quarters.

- In each relevant quarter, the combination of direct restrictions (closures and capacity limits) and indirect disruptions (supplier shutdowns) resulted in an operational environment clearly meeting the ERC’s suspension test.

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## 5. Conclusion

Based on the applicable law and the factual circumstances—including significant government-mandated shutdowns, capacity restrictions, and supply chain disruptions—taxpayer “3” qualifies for the Employee Retention Credit for the quarters affected by COVID-19. The business experienced a partial suspension of its operations because more than a nominal portion of revenue-generating activities was curtailed, satisfying the “government order” test under Section 2301(c)(2)(A)(ii)(I) of the CARES Act and supported by IRS guidance.

Therefore, it is concluded that taxpayer “3” is entitled to claim the ERC for qualified wages paid during the affected quarters, as formally substantiated by the analysis contained herein.

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## Attachments / Supporting Documentation

- Copies of applicable federal, state, county, and city orders (e.g., stay-at-home orders, mask mandates, and reopening orders)
- Evidence of operational adjustments implemented during the periods in question
- Industry data and supplier communications documenting supply chain disruptions

End of Form 886-A Document

Reviewed and Prepared on March 5, 2025.