

03/07/2025

Internal Revenue Service

Ogden, UT 84201

EIN: 3453

Taxpayer Name: 435

RE: Formal Protest to Letter 105 – ERC Disallowance for Q3

Tax Period: 3rd Quarter 2020 (202007)

Dear Appeals Officer,

We write in response to the IRS notice disallowing 435's Employee Retention Credit (ERC) claim for the third quarter of 2020. The disallowance was premised on the assertion that "no government orders were in effect" during Q3 2020 that caused a partial suspension of our operations. We respectfully disagree. Multiple federal, state, county, and city government orders were active during this period and imposed COVID-19-related restrictions that significantly impacted our normal business activities. In this protest, we provide a detailed timeline of the key orders in effect, demonstrate their effect on our operations, and explain why 435 qualifies for the ERC under the "partial suspension" provisions.

Timeline of COVID-19 Government Orders Active in Q3 2020

- **Order Name:** Proclamation 9994 – National Emergency Concerning COVID-19
- **Order Number:** 9994
- **Date Enacted:** 03/13/2020
- **Date Rescinded:** Still in effect
- **Order Summary:** This proclamation declared a nationwide emergency in response to the COVID-19 outbreak, activating federal emergency powers and establishing a framework for subsequent public health measures. Although it did not mandate direct business closures, it provided the legal and funding foundation for later state and local restrictions.
- **Impact on Quarter:** In Q3 2020, its continued effect underscored the legitimacy of restrictions that limited our business operations, contributing to our partial suspension under the ERC criteria.
- **Order Name:** State Public Health Officer Order (July 13, 2020) – Statewide Rollback of Reopening
- **Order Number:** Not applicable
- **Date Enacted:** 07/13/2020

- **Date Rescinded:** 08/31/2020
- **Order Summary:** This order was issued in response to a surge in COVID-19 cases and mandated a rollback of previously permitted indoor operations by closing sectors such as restaurants, bars, gyms, and personal care services. It required businesses that had reopened under less restrictive orders to revert to more limited operations.
- **Impact on Quarter:** For 435, the sudden re-closure and limitations imposed by this order during Q3 2020 forced a significant reduction in operations, directly leading to a partial suspension of normal business activities.
- **Order Name:** "Blueprint for a Safer Economy" Framework
- **Order Number:** State Public Health Officer Order (as announced on 08/28/2020)
- **Date Enacted:** 08/31/2020
- **Date Rescinded:** 06/15/2021
- **Order Summary:** This order introduced a color-tier risk model designed to gradually reopen the economy; however, areas initially classified under the most restrictive tier were allowed to operate only under very limited capacity and strict protocols. It replaced earlier reopening orders while continuing to impose limits on indoor operations and overall business capacity.
- **Impact on Quarter:** In Q3 2020, 435 was directly affected by this framework as it permitted only partial business activity, mandating significant operational adjustments that contributed to a partial suspension of services.
- **Order Name:** Ventura County July 2020 Order – Local Implementation of State Rollback
- **Order Number:** Not applicable
- **Date Enacted:** 07/13/2020
- **Date Rescinded:** 10/06/2020
- **Order Summary:** Following the state's directive to rollback indoor operations, Ventura County issued this local order to enforce similar restrictions on non-essential businesses. The order specifically targeted indoor operations, impacting various sectors by limiting capacity and mandating the closure of facilities that could not comply with the safety protocols.
- **Impact on Quarter:** As a business operating in the region, 435 experienced enforced limitations on indoor activities during Q3 2020, which directly reduced our hours and service capacity, fulfilling the partial suspension requirement.
- **Order Name:** Local Emergency Proclamation (Camarillo)
- **Order Number:** EOC Director Order No. 20-1
- **Date Enacted:** 03/13/2020

- **Date Rescinded:** Still in effect
- **Order Summary:** The City of Camarillo declared a local emergency to address the COVID-19 crisis, authorizing rapid response measures including facility closures, event cancellations, and the implementation of additional safety protocols. This declaration empowered the city to issue further orders that affected business operations throughout the pandemic.
- **Impact on Quarter:** Although primarily an administrative measure, the local emergency proclamation reinforced and facilitated the enforcement of stricter public health orders in Q3 2020, thereby indirectly causing significant operational restrictions for 435.

CONCLUSION AND REQUEST

The cumulative effect of these federal, state, county, and city orders was a partial suspension of 435's normal business operations during the third quarter of 2020. The restrictions mandated by these orders—reducing operating capacity, limiting indoor activities, and enforcing stringent public health protocols—resulted in significant curtailment of our revenue-generating activities. In light of the above facts and supporting authorities, we respectfully request that the IRS reconsider and reverse the disallowance of our Q3 2020 ERC claim. The credit claimed is fully supported by the applicable ERC provisions regarding a partial suspension resulting from government-mandated COVID-19 restrictions.

Attestation: "Under penalties of perjury, I declare that I submitted the protest and accompanying documents, and to the best of my personal knowledge and belief, the information stated in the protest and accompanying documents is true, correct, and complete."

Sincerely,

[Your Name]

Authorized Representative for 435

ENCLOSURES:

- Copies of Relevant COVID-19 Government Orders and Excerpts
- Supporting ERC Calculations for Q3 2020
- Correspondence and Documentation Pertaining to Q3 2020 Operational Impact