

5/2/2025

Internal Revenue Service
Ogden, UT 84201

EIN: 21341234

Taxpayer Name: 34

RE: Formal Protest to ERC Disallowance for Q2 2020

Tax Period: 2nd Quarter 2020 (202006)

DEAR APPEALS OFFICER:

On behalf of 34 (EIN: 21341234), we respectfully submit this formal protest in response to the disallowance of our Employee Retention Credit (ERC) claim for the second quarter of 2020. The notice states that our claim was denied due to a determination that “no government orders were in effect” during Q2 2020 that caused a suspension of our business operations. We firmly disagree. As demonstrated below, multiple federal, state, county, and city government orders were indeed active throughout Q2 2020, and they resulted in a partial suspension of our operations. In addition, our attached revenue data further underscores that other quarters within 2020–2021 meet the revenue-decline test, whereas Q2 2020 qualifies under the partial-suspension criteria.

I. Government Orders in Effect During Q2 2020

The following list details each relevant government order that was in place from April 1, 2020 through June 30, 2020. We have provided dates, official names/numbers, summaries, and specific impacts on Q2 2020 operations. These orders directly affected 34’s ability to conduct normal business activities, constituting a partial suspension under IRS guidance.

- **Order Name:** Proclamation 9994 – National Emergency Concerning COVID-19
- **Order Number:** Proclamation 9994
- **Date Enacted:** 03/13/2020
- **Date Rescinded:** Remained active throughout 2020 (terminated later in 2023)
- **Order Summary:** This proclamation declared a nationwide emergency in response to COVID-19. It enabled broad federal authorities to institute and support heightened public health measures. While it did not itself mandate direct closures, it triggered subsequent state and local actions.
- **Impact on Quarter:** In Q2 2020, 34 was subject to business modifications that arose under federal authority, including compliance with heightened

COVID-19 guidance. The ongoing national emergency set the backdrop that ultimately led California and local officials to restrict or partially close segments of our business operations.

- **Order Name:** California COVID-19 State of Emergency
 - **Order Number:** Governor's Proclamation (March 4, 2020)
 - **Date Enacted:** 03/04/2020
 - **Date Rescinded:** Remained effective throughout 2020–2021, ended in 2023
 - **Order Summary:** Governor Newsom's proclamation declared a statewide emergency, empowering the state to enact sweeping COVID-related orders. It suspended certain laws, streamlined emergency resources, and set the legal basis for lockdowns and reopening frameworks.
 - **Impact on Quarter:** During Q2 2020, this overarching state of emergency was still in place. It authorized the more specific lockdown and public health orders that reduced 34's capacity to operate at normal levels, including closures of non-essential functions and limitations on in-person activities.
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- **Order Name:** Executive Order N-33-20 – Statewide "Stay-at-Home" Order
 - **Order Number:** N-33-20
 - **Date Enacted:** 03/19/2020
 - **Date Rescinded:** 06/15/2021
 - **Order Summary:** This order imposed a statewide stay-at-home mandate, restricting residents from leaving home except for essential needs and designating which business sectors qualified as "essential." Non-essential businesses were forced to cease most in-person operations.
 - **Impact on Quarter:** From April through June 2020, 34, deemed non-essential or partially restricted, had to curtail or halt certain on-site operations. This partial closure directly affected production and service capabilities, reducing staffing needs and customer interactions.
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- **Order Name:** State Public Health Officer Order (Stage 2 Reopening)
 - **Order Number:** Issued per Executive Order N-60-20 (05/07/2020)
 - **Date Enacted:** 05/07/2020
 - **Date Rescinded:** 06/15/2021
 - **Order Summary:** This directive loosened some strict stay-home measures and permitted "lower-risk" businesses (such as limited retail) to resume partial operations with modifications (curbside pickup, physical distancing protocols). Higher-risk establishments generally remained closed.
 - **Impact on Quarter:** In Q2 2020, as restrictions eased in May, 34 could only partially reopen subject to capacity limits and health protocols (masks, distancing). These ongoing limitations still significantly curtailed normal operations during the remainder of Q2.

- **Order Name:** Ventura County Local Health Emergency
 - **Order Number:** County Declaration (03/12/2020)
 - **Date Enacted:** 03/12/2020
 - **Date Rescinded:** Not rescinded during 2020–2021 (ended in 2022)
 - **Order Summary:** Ventura County’s declaration recognized a local health emergency. It allowed local authorities to issue binding public health orders and quickly adapt to COVID-19 surges.
 - **Impact on Quarter:** Q2 2020 was marked by county-level directives that layered on top of the statewide orders. For 34, this meant adhering to county rules restricting in-person commerce, cutting facility occupancy, and implementing additional health screening measures for employees and customers.
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- **Order Name:** Ventura County Public Health Order (March 17, 2020)
 - **Order Number:** Health Officer Order (03/17/2020)
 - **Date Enacted:** 03/17/2020
 - **Date Rescinded:** Superseded 03/20/2020 by a stricter county stay-home order
 - **Order Summary:** This early local order prohibited or limited operations of many public-facing businesses (bars, gyms, dine-in restaurants), directing residents to stay home except for essential activities.
 - **Impact on Quarter:** Although soon superseded, it established the framework for extended local restrictions in April–June. 34’s operations were governed by these rules that essentially halted most non-essential in-person activities.
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- **Order Name:** “Stay Well at Home” Order (Ventura County)
 - **Order Number:** Health Officer Order (03/20/2020)
 - **Date Enacted:** 03/20/2020
 - **Date Rescinded:** 06/15/2021 (in line with the state)
 - **Order Summary:** This countywide stay-home order mandated closure of all non-essential businesses, prohibited gatherings, and required residents to remain at home except for permissible tasks (e.g., food, medical needs).
 - **Impact on Quarter:** In Q2 2020, 34 complied by suspending on-site operations that did not meet essential criteria. Even after limited Stage 2 reopening began in May, restrictions on capacity and hygiene persisted, materially depressing normal business throughput.
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- **Order Name:** Ventura County Public Health Order Updates (March–April 2020)
 - **Order Number:** Various Orders on 03/31/2020, 04/09/2020, 04/20/2020

- **Date Enacted:** 03/31/2020, 04/09/2020, 04/20/2020
 - **Date Rescinded:** Superseded by May/June orders aligning with state reopening phases
 - **Order Summary:** These updates extended the county lockdown timeline, banned all gatherings, and mandated strict social distancing and safety protocols for essential businesses still open.
 - **Impact on Quarter:** For Q2 2020, these continuously revised local rules forced 34 to maintain limited staffing, enforce social distancing, and, in many instances, terminate or suspend operations that could not meet distancing requirements.
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- **Order Name:** "Safely Reopening Ventura County" Order
 - **Order Number:** Health Officer Order (05/07/2020, amended 05/20/2020)
 - **Date Enacted:** 05/07/2020
 - **Date Rescinded:** 08/31/2020 (when the state's Blueprint replaced local rules), fully ended 06/15/2021
 - **Order Summary:** This order implemented Stage 2 reopening in Ventura County, allowing certain businesses to open with approved safety measures (e.g., curbside pickup for retail, limited dine-in service).
 - **Impact on Quarter:** While it provided partial relief in May/June, 34 still had to follow capacity restrictions, sanitation protocols, and social distancing. The partial reopening was far from normal conditions, leading to a continued operational slowdown.
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- **Order Name:** Ventura County Eviction Moratorium
 - **Order Number:** Urgency Ordinance No. 4563
 - **Date Enacted:** 04/22/2020 (retroactive to March 2020)
 - **Date Rescinded:** 09/30/2020 for commercial, with the County opting not to extend further
 - **Order Summary:** This ordinance protected both residential and certain commercial tenants from eviction if they fell behind on rent due to COVID-19 financial impacts. It did not eliminate rent; it simply delayed eviction proceedings during the emergency.
 - **Impact on Quarter:** For Q2 2020, 34—if renting facilities—was shielded from immediate eviction if revenues were insufficient to cover full rent obligations because of the operational restrictions. Although it lessened that financial pressure temporarily, the overall operational limitations still caused severe disruption.
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- **Order Name:** Local Emergency Proclamation (Camarillo)
 - **Order Number:** EOC Director Order No. 20-1
 - **Date Enacted:** 03/13/2020

- **Date Rescinded:** Remained active in 2020–2021 (lifted 2022)
- **Order Summary:** The City of Camarillo declared a municipal emergency, closing city buildings and empowering officials to rapidly issue local COVID-19 mandates.
- **Impact on Quarter:** Throughout Q2 2020, 34 had to navigate city-level restrictions (e.g., possible permit limitations and event cancellations in Camarillo). While not always a direct closure order, it created added layers of compliance and curtailed normal business conveniences (in-person permitting, inspections, etc.).
- **Order Name:** Camarillo Eviction Moratorium Orders
- **Order Number:** EOC Director Order No. 20-2 (Initial), Amendment (04/23/2020)
- **Date Enacted:** 03/18/2020 (amended 04/23/2020)
- **Date Rescinded:** Superseded by state legislation in September 2020 (for residential); local measures ended with the city’s emergency
- **Order Summary:** Prohibited landlords within Camarillo city limits from evicting tenants—residential or certain commercial—who could not pay rent because of COVID-related losses.
- **Impact on Quarter:** This gave 34 a safeguard if the business was leasing property, but it did not mitigate the loss of revenue from reduced operations. Rather, it merely postponed eviction threats.
- **Order Name:** Camarillo Resolution No. 2020-63 – Temporary Outdoor Dining Program
- **Order Number:** Resolution 2020-63
- **Date Enacted:** 06/10/2020
- **Date Rescinded:** Phased out in 2021 when capacity and indoor dining reopened fully
- **Order Summary:** Allowed restaurants to use sidewalk or parking-lot space for expanded outdoor dining without normal permitting hurdles. This measure aimed to assist businesses limited by indoor capacity restrictions.
- **Impact on Quarter:** Although geared toward dining establishments in Camarillo, it underscores the constraints that existed in Q2 2020. Even for non-restaurant operations like ours, the city’s need to relax outdoor dining rules highlights that indoor capacities were still heavily restricted at that time.

II. Quarterly Revenue Data

In addition to the government orders discussed above, we are submitting quarterly revenue data that demonstrates the revenue comparisons for 34. The following table presents the quarterly amounts and percentage changes for comparison purposes:

QUARTER	2019 REVENUE	COMPARISON REVENUE	DOLLAR DECLINE	% DECLINE	QUALIFIES
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Q1 2019-2020	\$234,123.00	\$4,123.00	\$230,000.00	98.24%	YES
Q2 2019-2020	\$412,341.00	\$412,341.00	\$0.00	0.00%	NO
Q3 2019-2020	\$234,123.00	\$234,123.00	\$0.00	0.00%	NO
Q4 2019-2020	\$41,234,123.00	\$41,234.00	\$41,192,889.00	99.90%	YES
Q1 2019-2021	\$234,123.00	\$1,234.00	\$232,889.00	99.47%	YES
Q2 2019-2021	\$412,341.00	\$23,412.00	\$388,929.00	94.32%	YES
Q3 2019-2021	\$234,123.00	\$342,134.00	\$108,011.00	-46.13%	NO

As shown in the revenue table, certain quarters (Q1 2019-2020, Q4 2019-2020, Q1 2019-2021, Q2 2019-2021) meet ERC thresholds based on significant revenue decline. Q2 2019-2020, by contrast, does not show a qualifying decline. However, the CARES Act and subsequent IRS guidance provide a separate qualifying pathway via full or partial suspension of business operations due to government orders. For Q2 2020, 34 was indeed subject to such orders (listed above), thereby confirming eligibility for the ERC under the partial-suspension test.

III. Partial Suspension Analysis Under IRS Guidance

The CARES Act permits an ERC claim if an employer is either (a) impacted by a qualifying revenue decline or (b) subject to government orders that partially or fully suspend operations. As evidenced, 34's normal activities were substantially restricted by overlapping federal, state, county, and city orders that mandated closures, social distancing, or capacity limits. IRS Notices clarify that even essential or partially operating businesses can be considered partially suspended if government orders meaningfully limit normal commercial functions. Q2 2020 plainly fits this scenario because:

- Executive Order N-33-20 and Ventura County's parallel "Stay Well at Home" order required the closure of non-essential on-site activities.
- The "Stage 2" re-openings in May/June permitted only limited or modified operations—far below standard capacity.
- Local emergency declarations in Ventura County and Camarillo imposed further operational constraints (limiting gatherings, restricting on-site services, and requiring social distancing).

Collectively, these measures caused more than a nominal disruption to 34's operations, consistent with the partial-suspension threshold set forth by IRS

guidance (IRS Notice 2021-20, Q/A #11 and others). At no point in Q2 2020 was 34 able to return to pre-pandemic operational norms due to these orders.

CONCLUSION AND REQUEST

Based on the above evidence, we respectfully request that the IRS reverse the disallowance of our ERC claim for Q2 2020. While our revenue data does not show a Q2 2020 decline, we do meet the criteria for a partial suspension of operations because of multiple government orders in effect during April 1–June 30, 2020. Our business was compelled to reduce or halt normal in-person activities, and these restrictions were neither voluntary nor trivial in effect. Therefore, 34 qualifies for the ERC for the second quarter of 2020 under the CARES Act's and IRS's clearly established partial-suspension provisions.

Attestation: "Under penalties of perjury, I declare that I prepared and examined the protest and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete."

Sincerely,

AUTHORIZED REPRESENTATIVE

34

ATTACHMENTS:

1. source_1_federalregister.gov.pdf - Proclamation 9994 (National Emergency)
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 (Stay-at-Home)
4. source_4_cdpd.ca.gov.pdf - State Public Health Officer Order (Stage 2)
5. source_5_vcportal.ventura.org.pdf - Ventura County Local Health Emergency
6. source_6_vcportal.ventura.org.pdf - Ventura County Public Health Order (03/17/2020)
7. source_7_vcportal.ventura.org.pdf - "Stay Well at Home" Order (Ventura County)
8. source_8_vcportal.ventura.org.pdf - Ventura County Public Health Order Updates (March–April 2020)
9. source_9_vcportal.ventura.org.pdf - "Safely Reopening Ventura County" Order
10. source_10_vcportal.ventura.org.pdf - Ventura County Eviction Moratorium
11. source_11_cityofcamarillo.org.pdf - Local Emergency Proclamation (Camarillo)

12. source_12_cityofcamarillo.org.pdf - Camarillo Eviction Moratorium Orders
13. source_13_cityofcamarillo.org.pdf - Camarillo Resolution No. 2020-63 (Outdoor Dining)