

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

DATE: 3/31/2025

1. Issue

- The disallowance of the ERC claim was based on the assertion that "no government orders were in effect."
- This protest is based solely on the government orders approach, asserting that multiple federal, state, county, and municipal orders in effect during Q2 2020 and Q3 2020 directly imposed full or partial suspension of operations for West Coast Marble and Granite.
- The evidence below demonstrates that government orders – which restricted access, reduced business capacity, and altered operating protocols – were active and materially impacted the business during the relevant periods.

2. Facts

- **Business Overview:** West Coast Marble and Granite is a Camarillo, CA–based business engaged in the fabrication, supply, and installation of high-quality marble and granite products. The company provides custom countertops, vanities, flooring, and wall cladding for both residential and commercial projects.
- **Operations & Workflow:** The business designs custom stone surfaces at its fabrication facility, sources raw stone from suppliers, and executes on-site installations. Workflows involve precision cutting, templating, polishing processes, and customer consultations to ensure exact design and fit. The firm typically serves local contractors, upscale residential homeowners, and commercial establishments in the greater Ventura County region.
- **Industry Context:** In a community like Camarillo, where high-end residential and commercial construction projects are common, the company's operations are subject to both material supply chain constraints and scheduling of on-site installations. During Q2 and Q3 2020, the cascade of COVID-19 orders disrupted normal operations by limiting access to supply channels, shortening on-site work windows due to social distancing mandates, and reducing customer visits or consultations.
- **COVID-19 Impact:** The activation of federal national emergency declarations, state stay-at-home and reopening rollback orders, and local Camarillo emergency proclamations forced a partial suspension of West Coast Marble and Granite's operations. In Q2 2020, the business experienced reduced throughput owing to closures and modified work practices mandated by

government orders. In Q3 2020, renewed restrictions and phased reopening protocols further constrained the ability to perform full-scale fabrication and installation services, thereby directly impacting business operations.

3. Law

- Under the CARES Act, the subsequent Coronavirus Response and Relief Act, and the American Rescue Plan (ARP), eligible employers can claim the ERC if their business operations were fully or partially suspended due to governmental orders limiting commerce, travel, or group meetings.
- IRS Notice 2021-20, IRS Notice 2021-23, and IRS Notice 2021-49 clearly state that even if only part of the business was affected, the credit may be available provided the government orders imposed a “more than nominal” reduction – often quantified under the “10% rule.”
- The legal test for “full or partial suspension” requires a review of the specific operational limitations imposed by the order. In this case, West Coast Marble and Granite was forced to modify or halt portions of its operations (such as on-site installations and in-facility fabrications), satisfying the requisite legal standard for a “more than nominal” impact.
- The analysis further confirms that even if the business is considered an essential service, the imposed restrictions on customer interactions, capacity limits, and supply chain interruptions constitute a valid basis for partial suspension under the applicable provisions.

4. Argument

Below are the detailed government orders that were in effect during the claimed periods:

Q2 2020 Orders

- **Order Name:** Proclamation 9994 – National Emergency Concerning COVID-19
- **Order Number:** Proclamation 9994
- **Date Enacted:** 03/13/2020
- **Date Rescinded:** Still in effect during Q2 2020
- **Order Summary:** “This proclamation declared a nationwide emergency due to the COVID-19 outbreak, activating federal emergency powers and funding. It provided the basis for subsequent state and local public health measures imposing restrictions on business operations. The language underscored the severity of the pandemic, mandating caution across all sectors.”
- **Impact on Quarter:** This proclamation fundamentally framed the pandemic response, ensuring that state and local authorities had the legal backing to impose restrictions that partially suspended West Coast Marble and Granite’s operational activities during Q2 2020.

- **Order Name:** State of Emergency Proclamation – California COVID-19 State of Emergency
 - **Order Number:** Governor’s Proclamation (N/A)
 - **Date Enacted:** 03/04/2020
 - **Date Rescinded:** Still in effect during Q2 2020
 - **Order Summary:** “Governor Newsom’s proclamation declared a state of emergency to address COVID-19, authorizing extensive public health measures and the suspension of routine business operations for non-essential sectors. It empowered the state to adopt additional orders affecting personal and commercial activities.”
 - **Impact on Quarter:** The state of emergency provided the legal authority for subsequent restrictive orders that forced West Coast Marble and Granite to limit in-facility operations and defer certain customer appointments, resulting in a partial suspension during the quarter.
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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 mandated that all California residents remain at home except for essential activities, requiring non-essential businesses to close or operate at minimal capacity. The order stipulated that only essential services could remain open while enforcing social distancing measures.”
 - **Impact on Quarter:** As a direct result of this order, West Coast Marble and Granite experienced reduced foot traffic and delayed on-site consultations, leading to a partial suspension of its customary fabrication and installation workflow during Q2 2020.
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- **Order Name:** Local Emergency Proclamation (Camarillo) – City Declaration of Emergency
 - **Order Number:** EOC Director Order No. 20-1
 - **Date Enacted:** 03/13/2020
 - **Date Rescinded:** Still in effect during Q2 2020
 - **Order Summary:** “The City of Camarillo declared a local emergency due to COVID-19, thus activating the emergency operations center and authorizing local public health measures and facility closures in order to mitigate the virus’ spread. The order specifically impacted public gatherings and in-person activities.”
 - **Impact on Quarter:** This order contributed to the reduction in in-person customer consultations and required modifications to operational protocols at West Coast Marble and Granite, directly affecting service delivery during Q2 2020.

- **Order Name:** Camarillo Resolution No. 2020-63 – Temporary Outdoor Dining Program
- **Order Number:** Resolution No. 2020-63
- **Date Enacted:** 06/10/2020
- **Date Rescinded:** Effectively ended 06/15/2021
- **Order Summary:** “This resolution allowed restaurants to create temporary outdoor dining areas by waiving specified zoning and parking restrictions. The language directed a shift from traditional indoor operations to outdoor service to comply with social distancing protocols.”
- **Impact on Quarter:** Although primarily aimed at the restaurant industry, this local measure highlighted the broader community-wide shift toward outdoor operations and capacity limitations. The altered regulatory environment indirectly affected West Coast Marble and Granite by reducing ancillary customer interactions and delaying project consultations.

Q3 2020 Orders

- **Order Name:** State Public Health Officer Order – Statewide Rollback of Reopening
 - **Order Number:** State Public Health Officer Order (July 13, 2020)
 - **Date Enacted:** 07/13/2020
 - **Date Rescinded:** 06/15/2021
 - **Order Summary:** “This order mandated the re-imposition of restrictions on indoor operations, requiring non-essential businesses to close or limit services to outdoor operations only. It stated that indoor dining, gyms, and other high-risk activities were to be suspended immediately as a response to the surge in COVID-19 cases.”
 - **Impact on Quarter:** This order forced West Coast Marble and Granite to halt or significantly reduce its indoor operational capacity, affecting appointments, fabrication scheduling, and in-facility consultations, thus resulting in a partial suspension throughout Q3 2020.
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- **Order Name:** Blueprint for a Safer Economy Framework
 - **Order Number:** State Health Officer Order (August 28, 2020)
 - **Date Enacted:** 08/28/2020
 - **Date Rescinded:** 06/15/2021
 - **Order Summary:** “The Blueprint for a Safer Economy established a color-tier reopening system that imposed capacity limits and operational restrictions based on local COVID-19 metrics. The language detailed that only allowed businesses could operate at reduced capacity, and indoor operations were subject to strict guidelines.”

- **Impact on Quarter:** Under this framework, West Coast Marble and Granite was restricted to operating at a significantly reduced capacity. Limitations on assembly areas, reduced on-site personnel numbers, and phased work schedules contributed to a partial suspension of normal business operations in Q3 2020.
- **Order Name:** Ventura County Public Health Order – Local Implementation of State Rollback
- **Order Number:** Ventura County Public Health Order (July 13, 2020)
- **Date Enacted:** 07/13/2020 (effective 07/14/2020)
- **Date Rescinded:** 10/06/2020
- **Order Summary:** “This order directed the closure of indoor operations for non-essential businesses, echoing state mandates and imposing additional local restrictions. It required that only outdoor or limited-capacity operations be conducted, with strict enforcement of social distancing protocols.”
- **Impact on Quarter:** The order caused West Coast Marble and Granite to further curtail on-site fabrication and customer meetings, compounding operational delays and contributing to a measurable partial suspension during Q3 2020.

5. Conclusion

- In light of the comprehensive evidence provided above, West Coast Marble and Granite meets the criteria for the ERC based solely on the government orders approach.
- The multiple government orders in effect during Q2 and Q3 2020 – including the national emergency declarations, state and local stay-at-home and rollback orders, and associated local resolutions – imposed restrictions that led to the full or partial suspension of normal business operations.
- Therefore, the disallowance reason that “no government orders were in effect” is unequivocally refuted.
- Under penalties of perjury, I declare that I submitted this Form 886-A and accompanying documents, and to the best of my personal knowledge and belief, the information stated herein and in accompanying documents is true, correct, and complete.