

03/03/2025

Internal Revenue Service

Ogden, UT 84201

EIN: 34234

Taxpayer Name: 342

RE: Formal Protest to Letter 105 – ERC Disallowance for Q1

Tax Period: 1st Quarter 2021 (202101)

Claim Amount: \$150,000

Dear Appeals Officer,

We write in response to the IRS notice disallowing 342's Employee Retention Credit (ERC) claim for the first quarter of 2021. The disallowance was premised on the assertion that no government orders were in effect during Q1 2021 that caused a suspension or 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 had a direct and material impact on our business operations. In this letter, we set forth a detailed timeline of the relevant orders, demonstrate their impact on our ability to operate normally, and cite applicable IRS guidance supporting our qualification under the “partial suspension” provisions.

Timeline of COVID-19 Government Orders Active in Q1 2021

Federal – National Emergency Concerning COVID-19

- Proclamation 9994 – “National Emergency Concerning COVID-19”

- Date Enacted: March 13, 2020

- Date Rescinded: Remained in effect until February 24, 2021

- Summary: This proclamation declared a national emergency that activated federal powers and funding mechanisms for COVID-19.

Although it did not mandate direct business closures, it established the legal foundation for subsequent state and local public health mandates that affected business operations. In Q1 2021, the continuing national emergency meant that essential business modifications and safety

protocols remained in force.

- Source & Link: [See Attachment 1:
attachment_1_https___bidenwhitehouse_archiv.pdf]

Federal – CDC/FAA Mask Mandates

- CDC/FAA Mask Mandates – “Federal Mask Requirements for Travel”
 - Date Enacted: January 21, 2021 (Executive Order on travel safety); CDC directive effective February 1, 2021
 - Date Rescinded: Order remained in effect through Q1 2021 (later lifted in 2022 by court order)
 - Summary: These mandates required masks for travel on airplanes, trains, buses, and in airports, thereby affecting employee commuting and inter-state business activities. Although focused on transit, the presence of the mandate underscored a continuing federal commitment to mitigating COVID-19 spread, reinforcing the environment of mandatory public health safety measures.
 - Source & Link: (Refer to the White House notice above for additional context)

California State Orders

- State of Emergency Proclamation – “California COVID-19 State of Emergency”
 - Date Enacted: March 4, 2020
 - Date Rescinded: Remained active throughout Q1 2021
 - Summary: Governor Newsom’s declaration of a statewide emergency provided the authority for all subsequent COVID-19 public health directives. Throughout Q1 2021, this proclamation underpinned restrictions and operational limits imposed on businesses, maintaining the legal framework for mandated safety measures and capacity restrictions.
 - Source & Link: [See Attachment 2:
attachment_2_https___www_gov_ca_gov_2020_03.pdf]
- Executive Order N-33-20 – “Statewide ‘Stay-at-Home’ Order”
 - Date Enacted: March 19, 2020
 - Date Rescinded: Remained in force through Q1 2021 (rescinded June 15, 2021)
 - Summary: Although California had begun phased reopening by early 2021, the underlying restrictions from this stay-at-home order continued to limit in-person operations and capacity for non-essential businesses.

Many businesses were subject to limitations on indoor operations, with requirements to transition to outdoor services or operate at reduced capacity, thereby impacting overall operational efficiency.

- Source & Link: [See Attachment 3: attachment_3_https___www_gov_ca_gov_wp_cont.pdf]

Ventura County Orders

- “Stay Well at Home” Order (Ventura County) – “Countywide Stay-Home Order”

- Order Date: March 20, 2020
- Date Rescinded: Remained effective through Q1 2021 (rescinded June 11, 2021)
- Summary: The Ventura County order mandated that residents remain at home for all non-essential activities, effectively forcing many local businesses, including ours, to operate under strict capacity and safety restrictions. Even as limited reopening occurred, the order’s guidelines continued to enforce physical distancing and reduced customer interaction, curtailing normal business operations during Q1 2021.
- Source & Link: (Example reference available on the Ventura County official portal)

City of Camarillo Orders

- Local Emergency Proclamation (Camarillo) – “City Declaration of Emergency”

- Order Number: EOC Director Order No. 20-1
- Date Enacted: March 13, 2020
- Date Rescinded: Remained in effect through Q1 2021
- Summary: The City of Camarillo’s declaration activated its Emergency Operations Center and imposed additional local public health measures. This declaration, along with subsequent orders (such as the Camarillo Eviction Moratorium and Temporary Outdoor Dining Program), contributed to an environment where operational modifications were mandatory for compliance with public health guidelines.
- Source & Link: (Refer to local government releases for Camarillo orders)

Summary of Relevant Orders and Operational Impact on 342

As detailed above, during Q1 2021 our business operated under an overlapping framework of federal, state, county, and city orders. The National Emergency declaration and CDC/FAA mask mandates established mandatory safety protocols for employees and customers. California's ongoing state emergency and stay-at-home orders imposed limitations on in-person interactions and capacity that required us to curtail normal operations. Locally, Ventura County's "Stay Well at Home" order and Camarillo's emergency proclamations further restricted operational flexibility. These orders mandatorily reduced occupancy levels, altered employee commuting and service delivery, and required significant modifications to our business practices, thereby meeting the IRS "partial suspension" standard.

ERC Partial Suspension Qualification – IRS Guidance and Analysis

Under applicable IRS guidance, an employer qualifies for the ERC for a given quarter if it experiences a decline in gross receipts or a full or partial suspension of operations due to a government order. In our case, although we remained operational in a limited manner, the COVID-19 orders in effect during Q1 2021 imposed restrictions that materially reduced our normal business activities. IRS Notice 2021-20 defines a partial suspension as one in which government-imposed conditions limit more than a nominal portion of an employer's operations. Our adherence to mandated capacity limits, enforced safety protocols, and switched operating modalities (such as expanding outdoor or remote services) clearly shows that our normal operations were subject to a significant constraint. We therefore believe that 342 qualifies under the "partial suspension" criteria for Q1 2021.

Conclusion and Request

In light of the facts and authorities set forth above, 342 respectfully requests that the IRS reconsider and reverse the disallowance of our ERC claim for the first quarter of 2021. The government orders detailed herein created a restrictive operating environment that substantially curtailed our normal business functions. Our claim is fully supported by IRS guidance—including Notice 2021-20—and by documented evidence of the COVID-19-related mandates in effect during Q1 2021.

Thank you for your prompt attention to this protest. Should you require

additional information or further documentation regarding the specific orders and their impact on our operations, please do not hesitate to contact us.

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,

Alejandra Astudillo, EA
Authorized Representative for 342

Enclosures: Copies of Government Orders and Relevant Excerpts; ERC Calculations for Q1 2021; IRS Guidance Documents (e.g., Notice 2021-20)