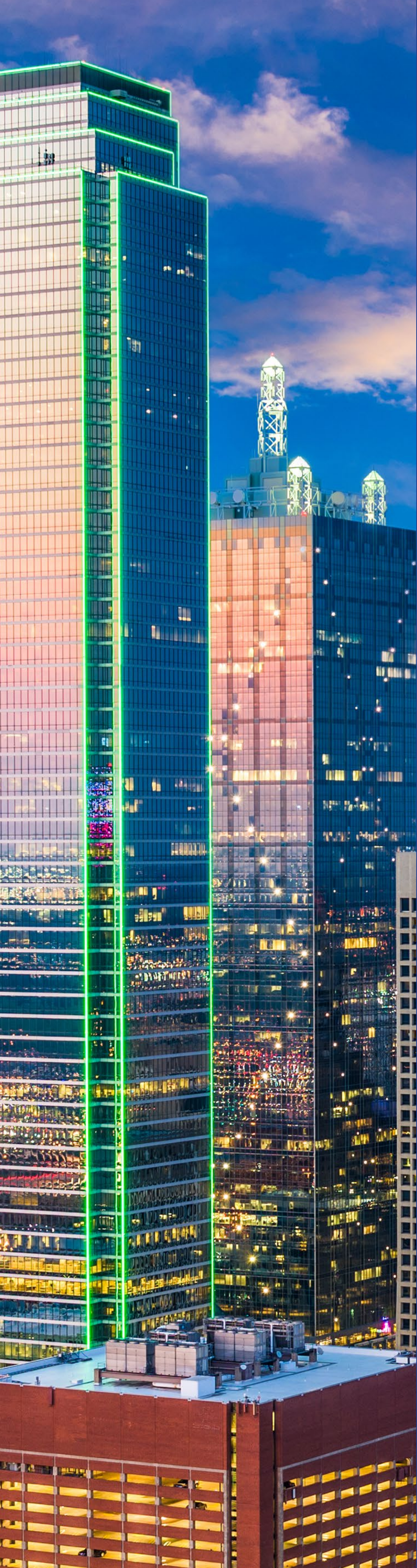


Decoding Dallas Governmental Orders

How Dallas-based businesses can navigate and mitigate potential IRS inquiries amid the COVID-19 pandemic.

BROTMAN LAW

402 W. Broadway, Ste. 800 • San Diego, CA 92101
SamBrotman.com • (619) 378-3138

INTRODUCTION

In the wake of the transformative impact of COVID-19, business owners across the nation find themselves navigating an altered landscape shaped by a series of governmental orders, compelling them to adapt, strategize, and redefine their operations in unprecedented ways.

As a Dallas-based business owner navigating the intricate web of governmental orders that unfolded, you may find yourself at the crossroads of understanding and responding to the Employee Retention Tax Credit (ERC) compliance requirements.

The ERC was an employment tax credit introduced as a lifeline for businesses that faced closures, reduced capacities, and operational challenges due to governmental orders. In fact, employers that qualify for the ERC can receive up to $26,000 for each eligible employee.

What To Do If You Have Not Filed – File with Brotman Law

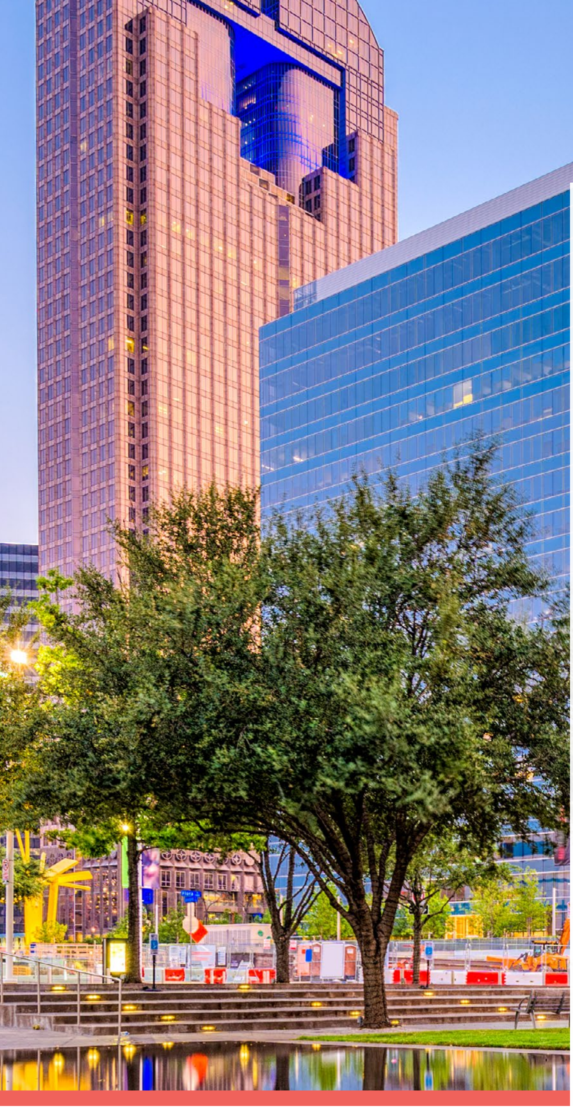
If you have not filed for the ERC yet, but believe your business qualifies, now is the time to take action. The current deadlines for 2020 filings are approaching, with the deadline set for April 15, 2024, and for 2021, the deadline is April 15, 2025.

To determine eligibility for the ERC, there are two tests that are used:

1. **Financial Impact Test:** This test is measured by comparing a quarter in 2019 to the same quarter in 2020 or 2021. In doing so, if a business has shown a decline in revenue that meets the designated amount set by the IRS, the business qualifies for the Employee Retention Tax Credit based on the financial impact test.

2. **Operational Impact Test:** This test addresses if your business was more than nominally impacted by a government order during the qualifying period. While CPAs and other tax professionals are more familiar with qualifying a business under the financial impact test, we have found that a large number of businesses have been told they do not qualify when they actually do under the operational impact test. Most businesses will at least qualify in Q2 of 2020, so we encourage you to speak with a tax attorney to determine if you qualify for the Employee Retention Tax Credit.

As the deadline approaches, we strongly urge you to consider filing for the ERC to maximize the financial support available to your business. Brotman Law is here to assist you through the filing process. Our experienced team can guide you through the intricacies of ERC compliance, ensuring that you take full advantage of this valuable resource. Don't wait until it's too late – contact us today to initiate the filing process and secure the financial relief your business deserves.



The ERC application deadline is approaching fast — Contact Brotman Law today to stay ahead of the curve and position your business for success.

Book a Call

What To Do If You Have Filed – Have Brotman Law Review It

The ERC is intricately detailed, and ensuring the precision of your filing is paramount. If you have already submitted an ERC claim, we recommend you engage us for a thorough review. Numerous instances of ERC scams have been documented, with companies inundating business owners with enticing advertisements, promising substantial refunds ranging from hundreds of thousands to even millions of dollars. Unfortunately, many businesses and non-profit organizations have underestimated the risks associated with these entities. Exercise caution, especially when an organization charges a contingent fee based on the credited amount.

Watch out for ERC companies claiming to be "one of the largest ERC processors" or boasting about the number of businesses they have helped. If your ERC company provided calculations on an amended payroll tax return using a spreadsheet, exercise caution. Additionally, if your business did not experience specific detriment due to a government order, or if your revenue increased during the pandemic, it's essential to review your eligibility.

If any of these scenarios apply to your ERC filing, contact Brotman Law immediately for a thorough check. Our firm can assess the legitimacy of your ERC claim, help you rectify any issues, and ensure compliance with IRS requirements. Your peace of mind is our priority, and we are here to assist you in navigating the complexities of the ERC.

Protect your business from possible IRS inquiries — Contact Brotman Law today to stay ahead of the curve and position your business for success.

Book a Call

What To Do If You Are Being Audited – Contact Brotman Law Right Away

As the IRS intensifies efforts to crack down on fraud, businesses are at an increased risk of being audited, especially if they claimed the Employee Retention Tax Credit (ERC). Audits can result in significant consequences, including having to pay back the credit, along with interest and penalties.

At Brotman Law, we pride ourselves on our credibility and track record in handling and representing Dallas-based business' ERC claims and audits. Our established law firm has processed over $125 million in ERC claims, supervising thousands of individual ERC claims with a deep understanding of the requirements. With a seasoned audit representation team that has collectively been involved in more than a thousand audits, we have the expertise to navigate even the most complex business structures.

If you are facing an audit or have concerns about the eligibility of your ERC, give us a call. Brotman Law is here to guide you through the ERC process to ensure compliance and peace of mind for your business.

Due to the complex landscape of the governmental orders that unfolded as a result of the COVID-19 pandemic, Brotman Law has crafted a comprehensive guide specifically tailored for Dallas business owners like you.

This guide details the chronological sequence of executive orders and measures enacted by the state of Texas in response to the COVID-19 pandemic. Its primary objective is to provide clarity on the detailed specifics that impacted Dallas-based business operations, empowering you with the knowledge to proactively navigate and mitigate potential IRS inquiries.

Do not face the IRS alone – Contact Brotman Law today to stay ahead of the curve and position your business for success.

Book a Call

LOCAL LANDSCAPE

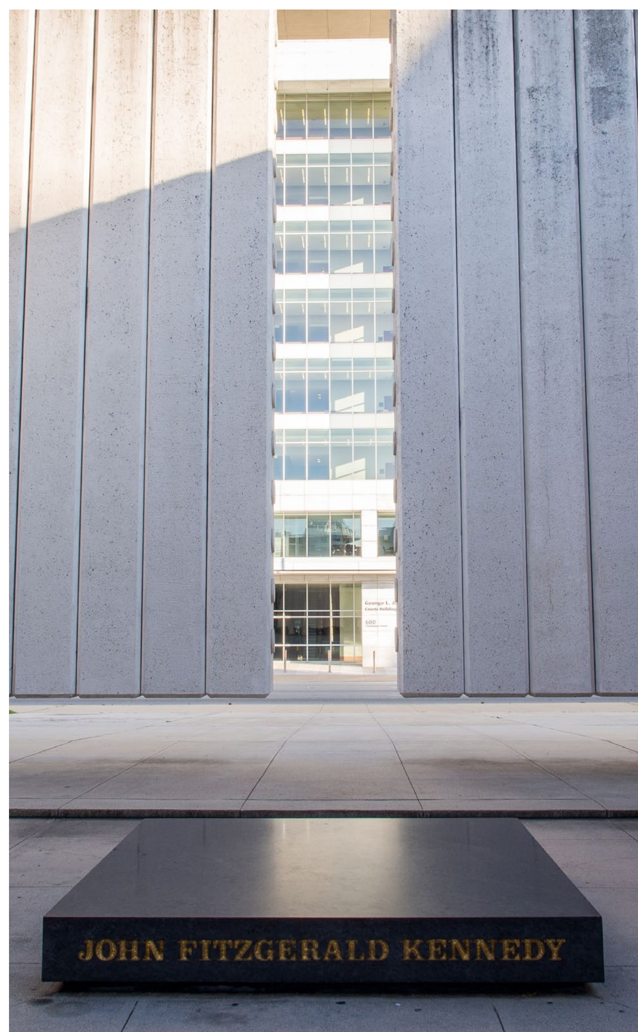
In Texas, non-essential businesses faced closure from March 31, 2020, with a gradual reopening starting on May 1, 2020, at reduced capacity. Additional businesses reopened on May 18, 2020, also at reduced capacity, with ongoing fluctuations in capacity restrictions. Notably, the language in the orders emphasizes "should" for social distancing and sanitation, offering recommendations rather than direct orders.

Moving specifically to Dallas, the county implemented a shelter-in-place order from March 22, 2020, to May 18, 2020. On March 29, 2020, this order was amended, directing essential businesses to adhere to social distancing guidelines, emphasizing telecommuting. Restaurants were restricted to providing takeout, delivery, or drive-thru services. Elective procedures and surgeries were prohibited in Q2 2020, and a mask mandate was in effect from April 16, 2020, through Q3 2021.

TEXAS EXECUTIVE ORDERS

On March 13, 2020, the state of Texas declared a State of Disaster due to the risk of the spread of COVID-19.[1]

On March 31, 2020, Texas issued Executive Order GA-14, which required all citizens to stay at home except to provide essential services or conduct essential activities.[2] Essential businesses were defined in the guidelines submitted by the Cybersecurity and Infrastructure Security Agency.[3] The order also stated that in providing or obtaining essential services, people and businesses should follow the guidelines from the President and the CDC.[4]



1 Proclamation by the Governor of the State of Texas, https://gov.texas.gov/uploads/files/press/DISASTER_covid19_disaster_proclamation_IMAGE_03-13-2020.pdf.

2 Executive Order No. GA-14, https://gov.texas.gov/uploads/files/press/EO-GA-14_Statewide_Essential_Service_and_Activity_COVID-19_IMAGE_03-31-2020.pdf.

3 Memorandum on Identification of Essential Critical Infrastructure Workers During Covid-19 Response, https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf.

4 Executive Order No. GA-14, https://gov.texas.gov/uploads/files/press/EO-GA-14_Statewide_Essential_Service_and_Activity_COVID-19_IMAGE_03-31-2020.pdf.

These guidelines included practicing good hygiene, environmental cleanliness and sanitation, implementing social distancing, and working from home if possible.[5] The order also stated that all services should be provided through remote telework from home unless they are essential services that cannot be provided through remote telework.[6]

On April 27, 2020, Governor Abbot released the Governor's Report to open Texas, which contained minimum recommended health protocols for individuals and businesses.

On May 1, 2020, Texas entered Phase 1 of the plan to reopen businesses, and some businesses were allowed to reopen at reduced capacity.[7]

All employers were recommended to do the following:

- Train all employees on appropriate cleaning and disinfection;
- Screen employees before coming into the business and not allow infected employees to return until at least three days have passed since recovery and at least seven days passed since symptoms first appeared;
- Have employees wash or sanitize their hands upon entering the business;
- Have employees maintain at least six feet of separation from other individuals;
- Consider having all employees wear cloth face coverings or face masks.[8]

On May 13, 2020, Governor Abbot signed a proclamation renewing the Disaster Declaration.[9]

On May 18, 2020, Texas issued Executive Order GA-23, which allowed reopening of "covered services" and included offices, manufacturers, personal care services, childcare centers, and gyms.[10] Most were required to have capacity restrictions at 25 percent and six-feet social distancing.[11]

On June 3, 2020, Texas issued Executive Order GA-26, which allowed all businesses operating at 25 percent capacity to increase to 50 percent capacity.[12]

5 *Id.*

6 *Id.*

7 https://gov.texas.gov/news/post/governor-abbott-announces-phase-one-to-open-texas-establishes-statewide-minimum-standard-health-protocols.

8 The Governor's Report to Open Texas, 21-22, https://open.texas.gov/uploads/files/organization/opentexas/OpenTexas-Report.pdf.

9 Proclamation by the Governor of the State of Texas, https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_No_2.pdf.

10 Executive Order No. GA-23, https://www.cityofcorsicana.com/DocumentCenter/View/4180/EO-GA-23_phase_two_expanding_opening_COVID-19?bidId=.

11 *Id.*

12 Executive Order No. GA-26, https://gov.texas.gov/uploads/files/press/EO-GA-26_expanded_opening_COVID-19.pdf.

On June 16, 2020, Governor Abbot signed a proclamation renewing the Disaster Declaration.[13]

On July 2, 2020, Governor Abbot signed Executive Order GA-29 requiring the use of face coverings inside commercial buildings.[14]

On July 10, 2020, Governor Abbot signed a proclamation renewing the Disaster Declaration.[15]

On August 8, 2020, Governor Abbot signed a proclamation renewing the Disaster Declaration.[16]

On September 7, 2020, Governor Abbot signed a proclamation renewing the Disaster Declaration.[17]

On October 7, 2020, Governor Abbot signed a proclamation renewing the Disaster Declaration.[18]

On October 8, 2020, Texas issued Executive Order GA-32, which increased the occupancy levels to 75 percent for all business establishments under capacity restrictions, other than bars, in areas with low COVID-19 hospitalizations.[19] The order indicated that areas with high hospitalizations may operate at only 50 percent capacity.[20] A trauma service area had a high hospitalization rate when it had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity exceeds 15 percent, until such time that trauma service area had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity was 15 percent or less.[21]

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13 Proclamation by the Governor of the State of Texas, https://gov.texas.gov/uploads/files/press/DISASTER-Renewing-Covid19-Disaster-Proclamation_06-11-2020.pdf

14 Executive Order No. GA-29, https://gov.texas.gov/uploads/files/press/EO-GA-29-use-of-face-coverings-during-COVID-19-IMAGE-07-02-2020.pdf

15 Proclamation by the Governor of the State of Texas, https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_IMAGE_07-10-2020.pdf

16 Proclamation by the Governor of the State of Texas, https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_IMAGE_08-08-2020.pdf

17 Proclamation by the Governor of the State of Texas, https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_IMAGE_09-07-2020.pdf

18 https://gov.texas.gov/news/post/governor-abbott-renews-state-disaster-declaration-for-covid-19

19 Executive Order No. GA-32,

20 *Id*

21 *Id*

On November 6, 2020, Governor Abbot signed a proclamation renewing the Disaster Declaration.[22]

On January 5, 2021, Governor Abbot signed a proclamation renewing the Disaster Declaration.[23]

On March 2, 2021, Texas issued Executive Order GA-34, which lifted the mask mandate and increased the capacity of all businesses and facilities in the state to 100 percent. The order rescinded most of the earlier executive orders related to COVID-19. Businesses could still limit capacity or implement additional safety protocols at their own discretion. Executive Order GA-34 also gave county judges in areas with high hospitalization rates, as explained above, the power to use COVID-19-related mitigation strategies.[24]

ADDITIONAL TEXAS RESTRICTIONS

- **Capacity Restrictions:** In early 2021, Texas imposed capacity restrictions on restaurants to limit the number of customers they could serve indoors. These restrictions were often based on a percentage of the establishment's normal occupancy limits, such as 50 percent or 75 percent capacity. Furthermore, counties and cities further imposed limits on capacity for indoor dining.

- **Mask Mandates:** The state of Texas, in particular Harris County, had periods with mask mandates in place during Q2 2021 through Q3 2021 depending on COVID-19 hospitalization rates.[25] Mask mandates required individuals, including restaurant staff and customers, to wear face coverings to help prevent the spread of COVID-19. Additionally, many customers refused to come into restaurants because customers would be required to wear masks.

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22 Proclamation by the Governor of the State of Texas, https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_IMAGE_11-06-2020.pdf

23 Executive Order No. GA-34, https://www.cityofcorsicana.com/DocumentCenter/View/4635/EO-GA-34-opening-Texas-response-to-COVID-disaster-IMAGE-03-02-2021?bidId=

24 *Id*

25 Executive Order GA-34 (specifically, section one of this order provides that an indoor mask mandate is still required when any of the 22 hospital regions in Texas where COVID-19 hospitalizations rise above 15% of the hospital bed capacity in that region for seven straight days), https://open.texas.gov/uploads/files/organization/opentexas/EO-GA-34-opening-Texas-response-to-COVID-disaster-IMAGE-03-02-2021.pdf; *see also* https://covid-harriscounty.hub.arcgis.com/ (showing hospitalization rates above 15% during Q2 2021 and Q3 2021).

- **Social Distancing:** Social distancing guidelines were implemented, encouraging individuals to maintain a safe distance from others. Restaurants had to follow these guidelines by rearranging seating areas, spacing tables apart, and implementing other measures to ensure physical distancing between customers.
- **Takeout and Delivery Emphasis:** To mitigate the impact of capacity restrictions, restaurants were encouraged to offer takeout, curbside pickup, and delivery services. These measures aimed to provide alternative options for customers while limiting indoor dining. Changing business models to adapt more takeout and delivery options lowered sales as customers were not on premise to consume additional purchases—mainly alcoholic beverages—which created a partial suspension of the employer's business and profit margins.
- **Enhanced Sanitization and Hygiene Protocols:** Restaurants were required to implement strict sanitization and hygiene protocols to ensure the safety of staff and customers. This included regular cleaning and disinfection, hand hygiene practices, and providing hand sanitizers.

DALLAS COUNTY ORDERS

Amended Order of County Judge Clay Jenkins, dated March 18, 2020, included Dallas County Health and Human Services ("DCHHS") social distancing instructions, which advised the public to avoid healthcare settings and emergency rooms unless it is essential.[26] On March 21, 2020, Judge Jenkins issued an order prohibiting elective medical, surgical, and dental procedures.[27] Medical facilities were instructed to assess which procedures could be postponed or canceled based on patient risk considering the emergency need for redirection of resources to COVID-19 response.[28]

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26 Amended Order of County Judge Clay Jenkins dated March 18, 2020, https://www.dallascounty.org/Assets/uploads/docs/judge-jenkins/covid-19/03182020-AmendedOrder.pdf

27 Amended Order of County Judge Clay Jenkins dated March 21, 2020, https://www.dallascounty.org/Assets/uploads/docs/judge-jenkins/covid-19/03212020-AmendedOrder.pdf

28 *Id.*

On March 22, 2020, Judge Jenkins ordered Dallas County to shelter-in-place.[29] All businesses except essential businesses were required to cease all activities at facilities. Restaurants may only provide takeout, delivery, or drive-thru. This order was renewed several times and was effective through May 15, 2020.[30] On March 29, 2020, the shelter-in-place order was amended. Essential businesses were ordered to comply with social distancing rules which included maximizing telecommuting options.

Judge Jenkins' Amended Order dated March 31, 2020, ordered all public, private, and commercial laboratories operating within Dallas County and performing COVID-19 testing to report by 5:00 pm each day for the prior 24-hour period the number of COVID-19 tests performed and the number of positive COVID-19 tests.[31] This requirement was included in subsequent executive orders through at least August 4, 2020, and was to remain effective continuing concurrently with the Governor's disaster declaration unless rescinded, suspended, or amended.[32] The Governor's disaster declaration expired in mid-June 2023.[33]

In an order dated April 16, 2020, Judge Jenkins ordered all persons over the age of two to wear some form of covering over their nose and mouth when patronizing an essential business or using public transportation.[34]

29 Amended Order of County Judge Clay Jenkins dated March 22, 2020, https://www.dallascounty.org/Assets/uploads/docs/judge-jenkins/covid-19/03232020-AmendedOrder.pdf

30 See Amended Order of County Judge Clay Jenkins dated April 23, 2020, https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/2020/april/042320-DallasCountyOrder.pdf

31 Amended Order of County Judge Jenkins dated March 31, 2020, https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/2020/march/033120-DallasCountyOrder.pdf

32 Supplemental Order of County Judge Clay Jenkins on Continuing Requirements after Expiration of Stay Home, Stay Safe, https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/2020/august/080420-Amended-SupplementalOrderonContinuingRequirements.pdf

33 https://www.texastribune.org/2023/06/12/greg-abbott-covid-disaster-renew

34 Amended Order of County Judge Clay Jenkins dated April 16, 2020, https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/2020/april/041520-DallasCountyOrder.pdf

On April 23, 2020, Judge Jenkins issued an amended order without the restrictions on elective medical procedures, to be consistent with the Governor's Executive Order GA-15, dated April 17, 2020, which allowed medical procedures that would not deplete hospital capacity or personal protective equipment needed to cope with the COVID-19 disaster.[35] The Governor's Executive Order also allowed any surgery or procedure to be performed in a licensed healthcare facility that had certified in writing to the Texas Health and Human Services Commission both: (1) that it would reserve at least 25 percent of its hospital capacity for treatment of COVID-19 patients, and (2) that it would not request any personal protective equipment from any public source.[36]

On July 24, 2020, Dallas County Health and Human Services issued an order closing all bars, nightclubs, bottle clubs, cigar bars, and cigar lounges.

On August 16, 2021, Judge Jenkins issued a modifying order on required use of a face mask in certain public spaces.[37] The order required commercial entities to develop and implement a health and safety policy.[38] The policy must require, at a minimum, universal indoor masking for all employees and visitors to the commercial entity's business premises or other facilities, except that employees were not required to wear a face mask while alone in their office.[39]

ABOUT BROTMAN LAW

At Brotman Law, we represent clients nationwide as a boutique tax law firm. We were founded in 2013 and recognized in 2018 by the Law Firm 500 as the 14th fastest-growing law firm in the United States. Today, we have nine attorneys and offices in San Diego, Los Angeles, and Chicago. Our practice areas relate to tax controversy, tax compliance, tax optimization, and tax credit work for businesses and individuals in different jurisdictions across the United States and internationally.

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35 Amended Order of County Judge Clay Jenkins dated April 23, 2020, https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/2020/april/042320-DallasCountyOrder.pdf; Executive Order No. GA-15, https://gov.texas.gov/uploads/files/press/EO-GA-15_hospital_capacity_COVID-19_TRANS_04-17-2020.pdf

36 *Id.*

37 Order of County Judge Clay Jenkins Modifying Order in Required use of a Face Mask in Certain Public Space, https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/2021/august/081621-DallasCountyOrder-CountyJudgeClayJenkins-ModifyingOrderOnRequiredUseofaFaceMaskinCertainPublicSpace.pdf

38 *Id.*

39 *Id.*

We've developed into one of the leaders in Employee Retention Tax Credit compliance work and have helped our clients to file for hundreds of millions of dollars in Employee Retention Tax Credits with a focus on larger, more technical, and more complex credit work. Our background in tax controversy, representing taxpayers in hundreds of audits, and saving them many millions of dollars in potential penalties, informs our judgment on the credit.

Our primary objective when representing an Employee Retention Tax Credit client is to try and maximize their credit, but first and foremost to keep them safe. At Brotman Law, we always ensure that the Employee Retention Tax Credit is done the right way for businesses across the United States.

Brotman Law equally represents Employee Retention Tax Credit companies and other mid-size and larger organizations with their tax credit compliance. Sam Brotman, owner and managing attorney, conducts weekly training for lawyers and speaks frequently on the subject. He has been recognized as a "Super Lawyer - Rising Star," a distinction awarded to the top 2.5% of lawyers nationwide every year for the last six years, to San Diego's "Best of the Bar" list of recommended attorneys and was most recently named a "Leader in Law" by the San Diego Business Journal for 2023.

With Sam's guidance and involvement in the industry, Brotman Law has been quoted by the Wall Street Journal, the New York Times, the Los Angeles Times, the Sacramento Bee, Fox News, and many other publications and news outlets. Our practical approach to problem-solving is different from other law firms, putting client goals and objectives, tax and non-tax, into a framework for making decisions in the best interest of our clients.

We draw on a wide range of interdisciplinary skills and business knowledge to help our clients make the best decision from a business perspective with their tax challenge, rather than simply solving their problem. Our Firm meets clients where they are and gets them where they want to be.

Bottom line: Tax is complicated enough, so we keep things simple and our advice straightforward to help you make the best decisions for you and your business.

Get comprehensive ERC assistance – Contact us or visit the Brotman Law website for more valuable resources.

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