

Decoding Houston Governmental Orders

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



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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 Houston-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 governmental order during the qualifying period. While CPAs and other tax professionals are 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 to apply for the ERC 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. Do not wait until it is 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 – Confirm Your Eligibility with Brotman Law

If you are a Houston-based business owner who utilized the ERC, it is important to be aware that the Internal Revenue Service (IRS) may soon come knocking. Understanding the specific governmental orders that impacted Houston is paramount in ensuring compliance and preparing for any potential IRS inquiries.

The ERC is intricately detailed, and ensuring the precision of your filing is paramount. If you have already submitted an ERC claim, it is highly advisable to engage Brotman Law for a thorough review. Numerous instances of ERC scams have been documented, with companies inundating business owners with enticing advertisements, pledging 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 governmental order, or if your revenue increased during the pandemic, it is essential to review your eligibility.

If any of these scenarios apply to your ERC filing, contact Brotman Law immediately for a thorough check. Our expert 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.

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< **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 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 Houston-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 Houston 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 Houston-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 the heart of Texas, non-essential businesses felt the impact when closures commenced on March 31, 2020. The road to recovery began on May 1, 2020, with businesses reopening at reduced capacities. Further easing of restrictions occurred on May 18, 2020, but the lingering effects of capacity limitations persisted. Notably, the language in these orders emphasizes recommendations for social distancing and sanitation rather than strict mandates.

Specifically for Houston, Harris County shelter-in-place orders spanned from March 24, 2020, through May 18, 2020. These orders mandated essential businesses to adhere to crucial health protocols, including social distancing, hand hygiene provisions, and symptom screening for patrons. Capacity restrictions extended through Q3 2021, adding another layer of complexity for local businesses.

TEXAS EXECUTIVE ORDERS

On March 13, 2020, the state of Texas declared a State of Disaster due to the risk of 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 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 May 1, 2020, Texas entered Phase One of the plan to reopen businesses, and some businesses were allowed to reopen at reduced capacity.⁷ On April 27, 2020, Governor Abbott released the Governor's Report to open Texas, which contained minimum recommended health protocols for individuals and businesses.



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.

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>.

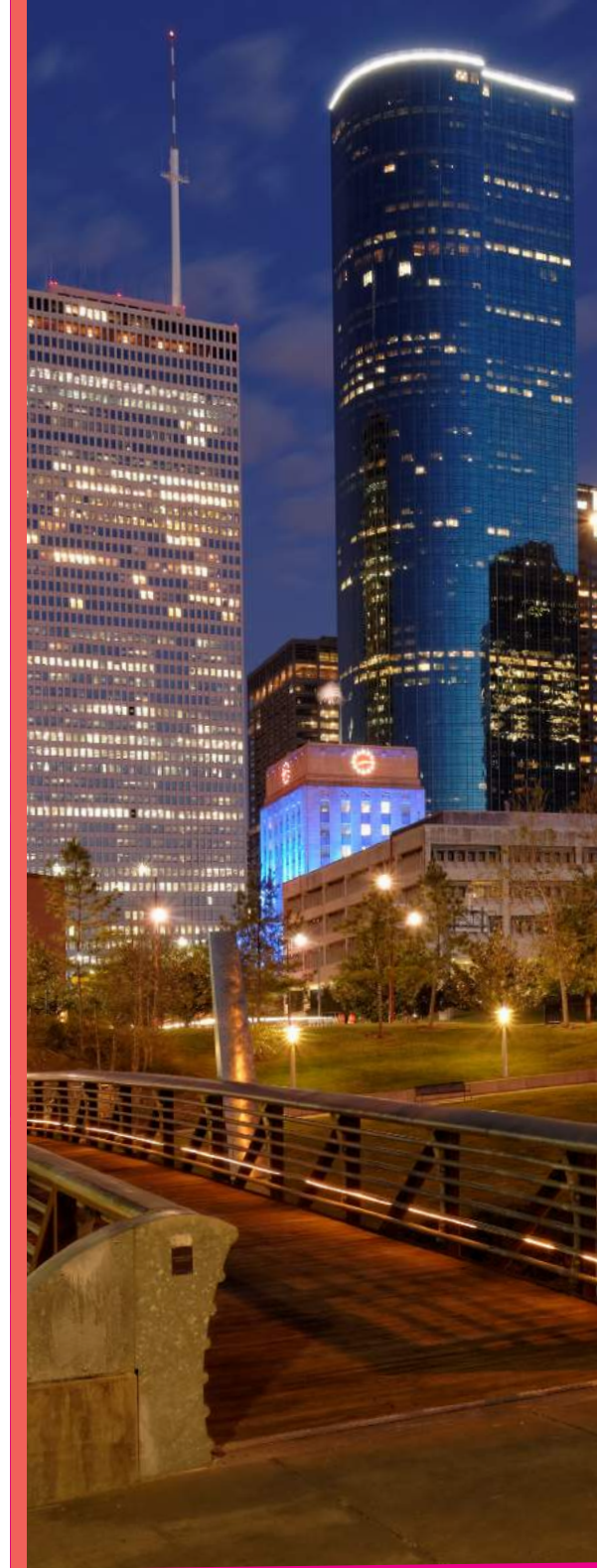
All employers were recommended to do the following:

- ▶ 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% and 6-feet social distancing.¹¹

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



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 Abbott signed a proclamation renewing the Disaster Declaration.¹³

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

On July 10, 2020, Governor Abbott signed a proclamation renewing the Disaster Declaration.¹⁵

On August 8, 2020, Governor Abbott signed a proclamation renewing the Disaster Declaration.¹⁶

On September 7, 2020, Governor Abbott signed a proclamation renewing the Disaster Declaration.¹⁷

On October 7, 2020, Governor Abbott 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% 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% 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%, until such time that trauma service area had seven constructive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity was 15% or less.²¹



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, https://gov.texas.gov/uploads/files/press/EO-GA-32_continued_response_to_COVID-19_IMAGE_10-07-2020.pdf.

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%. 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% or 75% 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.

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/\(showing hospitalization rates above 15% during Q2 2021 and Q3 2021\)](https://covid-harriscounty.hub.arcgis.com/(showing%20hospitalization%20rates%20above%2015%20during%20Q2%202021%20and%20Q3%202021)).



Additionally, many customers refused to come into Employer because customers would be required to wear masks.

- ▶ **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 adopt 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.



HARRIS COUNTY (HOUSTON)

Order of County Judge Lina Hidalgo, Stay Home, Work Safe Order: March 24, 2020

All individuals are ordered to stay home except for essential activities and essential work. All businesses except for essential businesses are ordered to cease all activities at facilities. Restaurants, bars, and other facilities that serve food are prohibited from serving food to be consumed on the premises. Gyms and fitness centers must close. Hair and nail salons, tattoo parlors, concert halls, movie theaters, bowling alleys, indoor malls and shopping centers, and bingo halls must close.

All essential businesses must practice social distancing, provide access to hand washing facilities or hand sanitizer, post signage instructing patrons not to enter if experiencing symptoms of respiratory illness, and adhere to other general disease control recommendations by public health authorities.

Third Amended Stay Home, Work Safe Order: May 8, 2020

Spas, massage establishments, tattoo studios, piercing studios, interactive amusement venues, concert halls, theaters, areas, game rooms, bowling alleys, arcades, and bingo halls shall remain closed.

Cosmetology salons, hair salons, nail salons, may reopen with six feet of distance between workstations.

Starting on Monday, May 18, 2020, office workers may reopen offices that operate at up to the greater of (i) five individuals or (ii) 25% of the total office workforce, provided that the individuals maintain social distancing.



Manufacturing services may reopen at up to 25% of total listed occupancy.

Gyms and exercise facilities may operate up to 25% listed occupancy, but locker rooms and showers must remain closed.

People and businesses should follow the minimum standard health protocols recommended by DSHS and should implement social distancing, work from home, if possible, and practice good hygiene, and sanitation.

Fourth Amended Stay Home, Work Safe Order: May 21, 2020

Interactive amusement venues, indoor concert halls, and performing arts venues must remain closed.

In providing essential or reopened services, people, and businesses should follow the minimum standard health protocols recommended by DSHS, and should implement social distancing, work from home, if possible, practice good hygiene, and sanitation. This also includes to the extent not inconsistent with DSHS minimum standards, the guidelines from the President and the CDC as well as other CDC recommendations. Individuals are encouraged to wear face coverings.

Order of County Judge Lina Hidalgo Providing Guidance for Harris County's Construction Workforce, May 21, 2020

Contains extensive recommendations for construction workers and employers.

Order of County Judge Lina Hidalgo Providing Guidance for Reopening Retail Businesses, May 21, 2020

Contains extensive recommendations for retail businesses.



Capacity Limitations:

Beginning on March 11, 2020, Governor Abbott issued an executive order to mitigate the spread of COVID-19 in Texas, which included the specific order that “every person in Texas shall avoid social gatherings in groups of more than 10 people.” Moreover, it required that “people shall avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors; provided, however, that the use of drive-thru, pickup, or delivery options are allowed and highly encouraged throughout the limited duration of this executive order.” A similar order was adopted at the local level by Harris County on March 16, 2020 (titled “Food Establishment & Bar Order”). This Governmental Order, its extensions, and others were in place from March 2020 until March 2021 throughout the state of Texas and Harris County. Further, the suspension of these Governmental Orders did not restrict local governments from enacting their own Governmental Orders and carved out localities with high COVID-19 hospitalization rates.



Specifically in Harris County²⁶, although there was a move toward a limited capacity of 75% in early 2021, the county reverted to 50% capacity given the surge in coronavirus cases in the region in Q1 2021. On June 11, 2020, Harris County implemented a COVID-19 Threat Level System that provides color coded levels of risk based on the incidence of COVID-19 and its transmission level and provides corresponding recommendations.²⁷ During the entirety of Q2 2021 through Q3 2021, Harris County was in red or orange level restrictions listed below.²⁸

RED	ORANGE
Stay home, except for essential activities.	Stay home when possible.
Avoid and cancel all gatherings of any size.	Avoid and cancel medium (10-250 people) and large public and private gatherings (250+ people).
All vulnerable individuals (65+ or with pre-existing health conditions) stay home when possible.	All vulnerable individuals (65+ or with pre-existing health conditions) stay home when possible.
Self-quarantine responsibly for 14 days if in close and prolonged contact with someone who has tested positive with COVID-19.	Self-quarantine responsibly for 14 days if in close and prolonged contact with someone who has tested positive with COVID-19.
Wear face coverings to protect others.	Wear face coverings to protect others.
Essential workers practice special precautions to prevent spread.	Essential workers practice special precautions to prevent spread.
Avoid non-essential business and personal travel. Follow state guidance for quarantine after visiting certain locations.	Avoid non-essential business and personal travel. Follow state guidance for quarantine after visiting certain locations.
Avoid public transportation where possible.	Use public transportation with caution. Practice good hygiene and social distancing.

²⁶ Harris County Order temporarily controlling the occupancy of a premise, <https://agenda.harriscountytexas.gov/2021/20210226Order.pdf>.

²⁷ See https://www.readyharris.org/Portals/60/documents/INFO_ReopeningStrategyPUBLIC-FULL.pdf.

²⁸ See https://thetexan.news/texas-local-news/harris-county-judge-hidalgo-drops-local-covid-19-threat-level-after-weeks-of-declining-cases/article_587b3e75-9390-5eb7-8496-794bf9530a4a.html.

ABOUT BROTMAN LAW:

Brotman Law represents clients nationwide as a boutique tax law firm founded in 2013 and was recognized in 2018 by the Law Firm 500 as the 14th fastest-growing law firm in the United States. Today, Brotman Law has nine attorneys and has offices in San Diego, Los Angeles, and Chicago. The Firm's 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.

Brotman Law has developed into one of the leaders in Employee Retention Tax Credit compliance work. The Firm has helped its clients and others file for hundreds of millions of dollars in Employee Retention Tax Credits and focuses 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 judgement on the credit.

The Firm's primary objective when representing a client with respect to the Employee Retention Tax Credit is to try and maximize their credit, but first and foremost to keep them safe. We make sure that the Employee Retention Tax Credit is done the right way for businesses across the United States.

The Firm equally represents Employee Retention Tax Credit companies and other mid-size and larger organizations with their tax credit compliance. Mr. Brotman conducts weekly trainings for lawyers and is a frequent speaker on the subject. Mr. Brotman 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.





- < At Brotman Law, our Firm has a practical approach to problem solving that differs from other law firms, putting client goals and objectives, tax, and non-tax, into a framework of making decisions in the best interest of the client.

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

Contact Brotman Law for expert ERC assistance or visit our website for more valuable resources.

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