

IRS Guideline Update: Supply Chain Disruption Qualification

IRS Update: New Supply Chain Memo

On July 21st, 2023 the IRS released a new Memo addressing nuances related to ERC eligibility on the basis of supply chain disruptions. The new Memo outlines **example business disruption scenarios companies** faced during Covid-19 with suppliers. In all cases presented the IRS deemed supply chain disruption in and of **itself not enough to be considered a full or partial suspension of operations**. While this memo is not to be used or cited as precedent, we believe it highlights the IRS's current view on supply chain disruption qualification.

Reminder: BLC Policy

It has always been our policy that eligibility through a partial suspension must have alignment to relevant governmental orders. This same principle applies to supply chain disruptions. When determining eligibility, it is essential to consider both the impacts of these disruptions and the relevant governmental orders.

IRS Links

- Original IRS Guidelines can be found at Notice 21-20: FAQ #12 <https://www.irs.gov/pub/irs-drop/n-21-20.pdf>.
- The new memo can be found at: <https://www.irs.gov/pub/iranoa/am-2023-005.pdf>.



IRS Guideline Update: Supply Chain Disruption Qualification

IRS Supply Chain Memo Categories:

1. Identification of Specific Governmental Order
1. Surplus of Goods and Materials
2. Causation by Governmental Order



BLC Interpretation and Principles:

1. To qualify for a supply chain disruption, a taxpayer must be able to identify the specific governmental order that fully or partially suspended the supplier's business. Vague confirmations from the supplier regarding COVID-19 impacts will not suffice.
2. Delays in obtaining critical goods or materials, even if occurring multiple times, will not be considered a supply chain disruption if the business had a surplus of goods to continue its operations.
3. Delays resulting from bottlenecks at the U.S. border/port or trucking and shipment delays do not qualify as supply chain disruptions. Taxpayers need to demonstrate that the supplier's inability to deliver critical goods or materials was directly caused by a specific governmental order.

IRS Guideline Update: Supply Chain Disruption Qualification

IRS Supply Chain Memo Categories:

4. Time Frame of Disruption
5. Cost of Goods and Materials
6. Retailers and Product Availability



BLC Interpretation and Principles:

4. If a taxpayer can demonstrate that a supplier's business was suspended by a governmental order, **the taxpayer can only claim a supply chain disruption for a period corresponding to the supplier's suspension**. Delays beyond this period **will not qualify**.
5. **Increased costs of critical goods or materials** during the pandemic **will not be sufficient** to claim a supply chain disruption. The determining factor is whether the taxpayer's ability to operate its business was hindered.
6. Retailers facing **limited product availability** and resorting to price adjustments on other products **will not qualify for a supply chain disruption** if their business operations were not impeded and a wide range of products remained available to customers.