STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
ROBISON MEDICAL RESOURCE GROUP, LLC
TO THE ASSESSMENT
ISSUED UNDER LETTER ID NO. L0625306288

v. **AHO No. 20.11-140A, D&O No. 21-14**

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

On April 15, 2021, Hearing Officer Dee Dee Hoxie, Esq. conducted a videoconference hearing on the motions for summary judgment filed in the protest of Robison[1] Medical Resource Group, LLC (Taxpayer) to the assessment. The Taxation and Revenue Department (Department) was represented by Timothy Williams, Staff Attorney, who appeared by telephone. Alma Tapia, Auditor, appeared by videoconference on behalf of the Department. The Taxpayer was represented by its attorneys, Ian Bearden, Zachary McCormick, and Alicia Harvey, who appeared by videoconference. David Dart, CFO for the Taxpayer, also appeared by videoconference for the hearing. The Hearing Officer took notice of all documents in the administrative file. Taxpayer's Exhibit #3 was admitted without objection. The parties agreed and stipulated to the facts as they were outlined in the Taxpayer's prehearing statement (TPHS[2]).

The main issue to be decided is whether the Taxpayer is entitled to a deduction under Section 7-9-93. The Hearing Officer considered all of the evidence and arguments presented by

[1] Based on the request for hearing, the Taxpayer's name has been captioned as "Robinson" by the Administrative Hearings Office in prior orders. The parties have been captioning their pleadings as "Robison" since the request for hearing. A review of the file and the information at the hearing indicate that the correct name is "Robison", and the change has been made in this order.

[2] Citations to the TPHS will be numbered as TPHS #__ to correspond to the numbers given in the outline of proposed stipulations contained therein, except for numbers after the first #9. The facts were numbered sequentially until #9, at which point the numbers 6-9 are repeated with different facts. For those repeated numbers, they will be referred to as #10-13, respectively.

both parties. The Taxpayer is a legal entity with receipts from managed health care providers for commercial contract services provided by health care practitioners who are employed by the Taxpayer, but the Taxpayer is not a health care facility[3]. *See* 3.2.241.13 NMAC. Consequently, the Hearing Officer finds in favor of the Taxpayer. IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On February 6, 2020, under letter id. no. L0625306288, the Department issued an assessment to the Taxpayer for the tax periods from January 31, 2013 to April 30, 2019. The assessment was for gross receipts tax of $191,718.88, penalty of $38,242.97, and interest of $22,230.23, for a total liability of $252,192.08. [Admin. file L0625306288; TPHS #1].

2. On May 6, 2020, the Taxpayer filed a timely written protest to the assessment. [Admin. file protest].

3. On May 26, 2020, the Department acknowledged its receipt of the protest. [Admin. file L1775769264].

4. On November 23, 2020, the Department filed a request for hearing with the Administrative Hearings Office. [Admin. file request].

5. On December 16, 2020, a telephonic scheduling hearing was conducted, which was within 90 days of the request as required by statute. [Admin. file].

6. On March 1, 2021, the Taxpayer filed a motion for summary judgment (Taxpayer's motion). [Admin. file].

[3] Here and throughout the decision, "health care facility" means a 501 (c) (3) organization, a hospital, HMO, hospice, nursing home, or an entity licensed under the Public Health Act as an outpatient facility or an intermediate care facility. *See* 3.2.241.13 NMAC.

7. On March 16, 2021, the Department filed its response and a cross-motion for summary judgment (Department's motion). [Admin file].

8. On March 26, 2021, the Taxpayer filed its response (Taxpayer's Response). [Admin. file].

9. The Taxpayer is engaged in the business of providing the services of its nurse employees on a temporary basis to clinics and other medical facilities operated by governmental entities. [TPHS #2].

10. All of the Taxpayer's gross receipts in New Mexico[4] were derived from the Indian Health Service (IHS) and the Department of Veteran's Affairs (VA), pursuant to contracts between the Taxpayer and those agencies. [TPHS #3].

11. Under those contracts, the Taxpayer provided health care services[5] in IHS and VA clinics and hospitals. [TPHS #4].

12. The IHS and the VA are managed health care providers. [TPHS #6-7].

13. The Taxpayer provided commercial contract services to the IHS and to the VA. [TPHS #8].

14. The Taxpayer's nurse employees are health care practitioners. [TPHS #9].

15. The Taxpayer claimed a deduction for its receipts derived from the sale of services to the IHS and to the VA under Section 7-9-93. [TPHS #10].

16. The Taxpayer is not exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code. [TPHS #12].

[4] During the tax periods at issue in the assessment.
[5] Through its nurse employees.

17. The Taxpayer is not an HMO, hospital, hospice, nursing home, or an entity that is solely an outpatient facility or intermediate care facility under the Public Health Act. [TPHS #13].

DISCUSSION

Burden of proof.

Assessments by the Department are presumed to be correct. *See* NMSA 1978, § 7-1-17 (2007). Therefore, the assessment issued to the Taxpayer is presumed to be correct, and it is the Taxpayer's burden to present evidence and legal argument to show that it is entitled to an abatement. *See El Centro Villa Nursing Ctr. v. Taxation and Revenue Department*, 1989-NMCA-070, 108 N.M. 795. *See also Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428. *See also N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8. The presumption extends to the assessment of penalty and interest. *See* 3.1.6.13 NMAC (2001).

The Taxpayer argues that it is entitled to take the deduction under Section 7-9-93 and Regulation 3.2.241.13. The burden is on the Taxpayer to prove that it is entitled to an exemption or deduction. *See Public Services Co. v. N.M. Taxation and Revenue Dep't.*, 2007-NMCA-050, ¶ 32, 141 N.M. 520. *See also Till v. Jones*, 1972-NMCA-046, 83 N.M. 743. "Where an exemption or deduction from tax is claimed, the statute must be construed strictly in favor of the taxing authority, the right to the exemption or deduction must be clearly and unambiguously expressed in the statute, and the right must be clearly established by the taxpayer." *Sec. Escrow Corp. v. State Taxation and Revenue Dep't.*, 1988-NMCA-068, ¶ 8, 107 N.M. 540. *See also Wing Pawn Shop v. Taxation and Revenue Dep't.*, 1991-NMCA-024, ¶ 16, 111 N.M. 735. *See also Chavez v. Commissioner of Revenue*, 1970-NMCA-116, ¶ 7, 82 N.M. 97. *See also Pittsburgh and Midway Coal Mining Co. v. Revenue Division*, 1983-NMCA-019, 99 N.M. 545.

Motions for summary judgment are appropriate when there is no genuine issue of material fact and the judgment is a matter of law. *See Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 12. *See also Roth v. Thompson*, 1992-NMSC-011, 113 N.M. 331. *See also Ute Park Summer Homes Ass'n v. Maxwell Land Grant Co.*, 1967-NMSC-086, 77 N.M. 730. *See also Martinez v. Logsdon*, 1986-NMSC-056, 104 N.M. 479. The parties agreed that there were no disputes as to the material facts. The parties also agreed that the outcome of the summary judgment motions would be dispositive to the issues of the hearing and that a final decision and order either granting or denying the protest should be issued.

Gross receipts tax.

Anyone engaging in business in New Mexico is subject to the gross receipts tax. *See* NMSA 1978, § 7-9-4 (2010). To engage in business in New Mexico means "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit." NMSA 1978, § 7-9-3.3 (2019)[6]. Gross receipts include the total amount received "from performing services in New Mexico." NMSA 1978, § 7-9-3.5 (A) (1) (2019). There is a statutory presumption that "all receipts of a person engaging in business are subject to the gross receipts tax." NMSA 1978, § 7-9-5 (A) (2019). The parties stipulated that the Taxpayer's employees were providing services at the IHS and the VA in New Mexico. [TPHS]. Presumptively, the Taxpayer's receipts for providing those services are subject to the gross receipts tax. *See* NMSA 1978, § 7-9-4, §7-9-5.

Section 7-9-54.

The Taxpayer's motion focuses on Section 7-9-54. [Taxpayer's motion]. "Receipts from selling tangible personal property to" a government agency may be deducted from gross receipts, but the portion of those receipts attributable to the performance of a service for a government

[6] The most current version of statutes and regulations will be referenced unless there is a relevant substantive change between it and the version in effect at the time that the Taxpayer's services were rendered.

agency are not deductible. NMSA 1978, § 7-9-54 (A) (2018). *See also* 3.2.212.9 NMAC (A) (2001). The Department's response did not address the issue on Section 7-9-54. [Department's motion]. Rather, it focused on the deduction under Section 7-9-93 and recent unpublished caselaw. [Department's motion]. At the hearing, the Department acknowledged that the auditor relied, in part, on Section 7-9-54 when the assessment was made, and perfunctorily asserted it in addition to the main arguments on Section 7-9-93. [Exhibit #3].

The first step in statutory interpretation is to look at the plain language of the statute and to refrain from further interpretation if the plain language is not ambiguous. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n.*, 2009-NMSC-013, 146 N.M. 24. Statutes are to be applied as written unless a literal use of the words would lead to an absurd result. *See N.M. Real Estate Comm'n. v. Barger*, 2012-NMCA-081, ¶ 7.

If a statute is ambiguous or would lead to an absurd result, then it should be construed in accordance with the legislative intent or spirit and reason for the statute, even though it may require a substitution or addition of words. *See id. See also State ex rel. Helman v. Gallegos*, 1994-NMSC-023, 117 N.M. 346. *See also Kewanee Indus., Inc.*, 1993-NMSC-006. When a statute is ambiguous or would lead to an absurd result, it should be construed according to its obvious purpose. *See T-N-T Taxi Co. v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-016, ¶ 5, 139 N.M. 550. The heading of a statute may be considered in its interpretation, but the heading does not limit or change the plain meaning of the text of the statute. *See State v. Gutierrez*, 2020-NMCA-045, ¶ 15.

Section 7-9-54 has the heading "[d]eduction; gross receipts tax; governmental gross receipts tax; sales to governmental agencies." NMSA 1978, § 7-9-54. Generally, the receipts from selling tangible personal property to a governmental agency may be deducted from gross

receipts. *See id.* However, "the deduction *provided by this subsection* does not apply to: …that portion of the receipts from performing a 'service' that reflects the value of tangible personal property utilized or produced in performance of such service." *Id.* (emphasis added).

The Legislature's choice of words expresses a clear intent that the exclusions contained in Section 7-9-54 only limit the availability of that section. There is no expression of an intent to disallow all deductions for receipts derived from services sold to governmental agencies. Otherwise, the Legislature would not have limited its scope with the use of a single determiner, "this."

The Department's own regulation also provides that "[r]eceipts from the sale of a service to a governmental agency are not deductible *pursuant to Section 7-9-54 NMSA 1978*." 3.2.212.9 (A) NMAC (emphasis added). The regulation demonstrates an interpretation of the law consistent with the enactment itself, that the exclusion contained in Section 7-9-54 only applied to Section 7-9-54.

There is no indication in the regulation that the statute was interpreted to enact a wider or broader general prohibition on all receipts derived from services sold to governmental agencies. *See* 3.2.212.9 NMAC. Instead, the Department simply echoed the language that was already contained in the statute, limiting the availability of that single deduction. *See id.*

Moreover, the Department's argument is inconsistent with the caselaw. *See TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-007, 133 N.M. 447 (holding that a different section afforded a deduction for the sale of a service to a governmental agency). *See also In re the Protest of Sandia Corp.*, Decision & Order No. 19-11, p. 74-80 (Admin. Hearings Office, April 19, 2019) (non-precedential) (rejecting the Department's argument that Section 7-9-54 precluded deductions from being taken under a different section and finding that the

Department's position was inconsistent with caselaw and its own publications). Therefore, the provisions of Section 7-9-54 do not preclude deductions taken under other statutes. *See* NMSA 1978, 7-9-54.

Deductions under Section 7-9-93.

The assessment spans the years from 2013 to 2019. [Admin. file]. Therefore, two versions of the statute are applicable to the assessment, the statute in effect from 2013 to 2016, and the amended statute in effect from 2016 through the end of the assessment period. *See* NMSA 1978, § 7-9-93 (2007) and (2016). From 2013 to 2016, the statute provided that

> Receipts from payments by a managed health care provider or health care insurer for commercial contract services or medicare part C services provided by a health care practitioner that are not otherwise deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act may be deducted from gross receipts, provided that the services are within the scope of practice of the person providing the service. Receipts from fee-for service payments by a health care insurer may not be deducted from gross receipts. The deduction provided by this section shall be separately stated by the taxpayer. NMSA 1978, § 7-9-93 (A) (2007).

The amended statute provides that

> Receipts of a health care practitioner for commercial contract services or medicare part C services paid by a managed health care provider or health care insurer may be deducted from gross receipts if the services are within the scope of practice of the health care practitioner providing the service. Receipts from fee-for-service payments by a health care insurer may not deducted from gross receipts. NMSA 1978, § 7-9-93 (A) (2016).

Both versions of the statute share the same basic criteria, 1) the receipts must be paid by a managed health care provider or health care insurer, 2) the receipts are payments for commercial contract services or medicare part C services, 3) the services were performed by a health care practitioner within the scope of their practice. *See id.* (2007 and 2016).

The parties stipulated to the facts. The Taxpayer's receipts are derived from the services of their nurse employees for providing commercial contract services to the IHS and to the VA.

[TPHS]. The IHS and the VA are managed health care providers. [TPHS]. Therefore, the Taxpayer's receipts satisfy these basic statutory criteria. *See* NMSA 1978, § 7-9-93.

Under the regulations, a business entity[7] can qualify as a health care practitioner.

The Department argues "that the deduction is not available to business entities similar to that of the Taxpayer in this case, but limited to individual health care practitioners." [Department's motion, p. 2]. The Department cites a recent unpublished case to support its argument. *See Golden Services Home Health and Hospice and Unnamed Nursing and Rehabilitation Center v. Taxation and Revenue Dep't*, No. A-1-CA-36987, mem. op. (NMCA, April 20, 2020) (non-precedential), *cert. denied*, No. S-1-SC-38341 (NMSC, November 17, 2020), 2020 WL 2045956. The Department argues that the statute only applies to individual health care practitioners. [Department's motion].

The decision in *Golden Services* provides some support for the Department's argument. In its reasoning, the court found that the statute "lends support to the conclusion that only health care practitioners could hold qualifying 'receipts from payments by a managed health care provider or health care insurer.'" *Golden Services*, No. A-1-CA-36987, mem. op., ¶ 25. The court also opined that the 2016 amendment "finalizes once and for all that the Legislature does not intend to bestow a tax deduction to simply 'any taxpayer' and thus non-practitioner transactions do not fall within the purview of" the statute. *Id.* at ¶ 26. Specifically, under the facts of the decision, the court held that "health care facilities,…,are not entitled to claim the deduction." *Id.* at ¶ 24.

However, an unpublished decision is not controlling precedent. *See* Rule 12-405 NMRA (2012) (stating that unpublished decisions are not precedent but may still be persuasive). *See*

[7] Throughout the decision, "business entity" means a corporation, unincorporated business association, or other legal entity. *See* 3.2.241.13 NMAC.

also Hess Corp. v. N.M. Taxation & Revenue Dep't, 2011-NMCA-043, ¶ 35, 149 N.M. 527 (indicating that unpublished opinions and orders are written solely for the benefit of the parties and have no controlling precedential value). *See also Inc. County of Los Alamos v. Montoya*, 1989-NMCA-004, ¶ 6, 108 N.M. 361 (noting that unpublished caselaw is not binding precedent). *See State v. Granillo-Macias*, 2008-NMCA-021, ¶ 11, 143 N.M. 455 (noting that unpublished orders, decisions, and opinions are not controlling and are written solely for the benefit of the parties). *See State v. Gonzales*, 1990-NMCA-040, ¶ 47-48, 110 N.M. 218 (noting that unpublished orders, decisions, and opinions are not meant to be controlling authority and that they rarely describe the context of the issue at length, which may be of controlling importance to the decision).

The Taxpayer is claiming the deduction based on the Department's own regulation. "A corporation, unincorporated business association, or other legal entity may deduct *under Section 7-9-93 NMSA 1978* its receipts from managed health care providers or health care insurers for commercial contract services…provided on its behalf by health care practitioners who own or *are employed by* the corporation, unincorporated business association or other legal entity". 3.2.241.13 NMAC (2006) (emphasis added). The regulation implicitly expands the definition of a health care practitioner by explicitly allowing business entities to claim the deduction under Section 7-9-93. *See id.*[8] The regulation was in effect under both the 2007 and 2016 versions of the statute. *See id.*

[8] Prior to this decision, the statute was again amended during the 2021 Legislative session, under House Bill 98 (H.B. 98). This amendment provides a deduction on commercial contract services for receipts of a health care practitioner or an association of health care practitioners, which is defined as a legal entity organized by, owned by, or employing one or more health care practitioners, provided that the legal entity is not a listed type of health care facility. *See* H.B. 98. Essentially, the newest version of the statute codifies the regulation. *See id. See also* 3.2.241.13 NMAC.

Not every business entity qualifies as a health care practitioner under the regulation. *See id.* In addition to the statutory criteria[9], the health care practitioners who perform the services on the business entity's behalf must 1) own, or 2) be employed by the business entity. *See id.* In addition, the business entity cannot be a 501 (C) (3) organization or "an HMO, hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility licensed under the Public Health Act." *Id.*

These excepted entities may not take the deduction. *See id.* "An organization, whether or not owned exclusively by health care practitioners, licensed as a hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility under the Public Health Act" may not take the deduction. 3.2.241.17 NMAC (2006). Such a facility "is not a 'health care practitioner' as defined by Section 7-9-93". *Id.*

The Department argues that its own regulation is invalid. The purpose of the Department's regulations is "to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act." 3.2.1.6 NMAC (2001). The Department has authority to enact regulations that interpret and exemplify the statutes to which they relate. *See* NMSA 1978, § 9-11-6.2 (B) (1) (2015). The Department's regulations also carry a presumption that they are a "proper implementation of the provisions of the laws". NMSA 1978, § 9-11-6.2 (G).

The Department's authority to enact regulations includes the power to amend or to repeal a regulation when it becomes necessary to do so "by reason of any alteration of any such law." *Id.* Since 2006, the Department has not amended or repealed Regulation 3.2.241.13 or Regulation 3.2.241.17 despite changes to the statute to which they relate. *See* 3.2.241.13 and

[9] Again, payments from managed health care providers for commercial contract services performed by health care practitioners within the scope of their practice. *See* NMSA 1978, § 7-9-93.

3.2.241.17 NMAC. *See also* NMSA 1978, § 7-9-93 (2007) and (2016). Consequently, the Department's regulations remain a published and presumptively proper implementation of the statute. *See id. See also* NMSA 1978, § 9-11-6.2. *See also Golden Services*, No. A-1-CA-36987, mem. op. Therefore, it is reasonable for the Taxpayer to rely on the published and presumptively proper regulations as a valid implementation of the statute, despite the Department's argument to the contrary at the hearing.

In *Golden Services*, the court also found that there was no "basis to conclude that the Department's new regulations were an improper interpretation of the statute" and that they were presumptively proper. *Golden Services*, No. A-1-CA-36987, mem. op., ¶ 21. The regulations that the court found were proper were 3.2.241.13 and 3.2.241.17, which are the very regulations at issue in this protest. *See id.* The Department's argument contains an inherent contradiction, that the court's decision in *Golden Services*, which relied upon the validity of the regulations, has simultaneously rendered those regulations invalid. *See id.*

In *Golden Services*, the taxpayers were the types of health care facilities that the regulation prohibits from claiming the deduction under Section 7-9-93. *See id. See also* 3.2.241.13 and 3.2.241.17. In the underlying protests that led to the *Golden Services* appeal, the regulations were found to be improper because they placed additional limitations on the deduction, which were not found in the statute[10]. *See Golden Services*, No. A-1-CA-36987, mem. op. The court reversed the decisions of the protests and found that the regulations were proper. *See id.*, at ¶ 20-21. The Hearing Officer will follow the court's guidance and finds that the regulations are not improper or invalid. *See id.*

[10] The 2007 version of the statute, which allowed deductions of receipts of payments that met the statutory criteria.

The taxpayers in *Golden Services* were health care facilities and were claiming the deduction under the statute, even though the regulation prohibited it. *See id.* Conversely, the Taxpayer in this protest is not a health care facility and is claiming the deduction under the statute based on the language in the regulation that allows a business entity to claim the deduction for the health care practitioners that it employs. *See* 3.2.241.13 NMAC. This is a crucial distinction, and *Golden Services* cannot resolve issues that it did not contemplate, which is part of the reason why unpublished decisions are non-precedential. *See Golden Services*, No. A-1-CA-36987, mem. op. *See also Hess Corp.*, 2011-NMCA-043, ¶ 35. *See also Inc. County of Los Alamos*, 1989-NMCA-004, ¶ 6. *See Granillo-Macias*, 2008-NMCA-021, ¶ 11. *See Gonzales*, 1990-NMCA-040, ¶ 47-48.

As the regulation contemplates that a business entity who satisfies its criteria is a health care practitioner for purposes of claiming the deduction under the statute, the Taxpayer's arguments are consistent with the holding in *Golden Services* that a health care practitioner, as defined by the statute and valid regulations, is the taxpayer who may claim the deduction. *See Golden Services*, No. A-1-CA-36987, mem. op. Consequently, the Department's argument is not persuasive.

The Taxpayer is not a health care facility. [TPHS]. It is not a 501 (c) (3) organization, nor is it a hospital, HMO, hospice, nursing home, or an entity licensed under the Public Health Act as an outpatient facility or an intermediate care facility. [TPHS]. *See also* 3.2.241.13 and 3.2.241.17 NMAC. The Taxpayer is more akin to an employee staffing agency. The Taxpayer has nurses who are its employees. [TPHS]. Its employees provided commercial contract services within the scope of their health care practice for managed health care providers, the IHS and the VA, pursuant to contracts that it had with those managed health care providers. [TPHS].

The Taxpayer is a legal entity[11] with receipts from managed health care providers for commercial contract services provided on its behalf by health care practitioners who are its employees; therefore, the Taxpayer falls within the purview of the regulation. *See* 3.2.241.13 NMAC.

The Department's regulations are presumptively proper. *See* NMSA 1978, § 9-11-6.2 (G). Regulation 3.2.241.13 and Regulation 3.2.241.17 both interpret Section 7-9-93 as allowing a business entity to claim the deduction, but only if the business entity is not one of the listed health care facilities. *See* 3.2.241.13 and 3.2.241.17 NMAC. Both regulations apply to both versions of the statute in effect during the tax periods at issue. *See id.* The decision in *Golden Services* found that Regulation 3.2.241.13 and Regulation 3.2.241.17, specifically, were presumptively proper. *See Golden Services*, No. A-1-CA-36987, mem. op. ¶ 20-21.

Regulation 3.2.241.13 essentially expands the definition of a health care practitioner and allows business entities to claim the deduction under Section 7-9-93. *See* 3.2.241.13 NMAC.[12] Certain types of business entities that are health care facilities are prohibited from claiming the deduction under Section 7-9-93. *See id. See also* 3.2.241.17 NMAC. The Taxpayer's business entity is not one of the health care facilities that is prohibited from claiming the deduction. *See* 3.2.241.13 NMAC. If it were, then the regulation in conjunction with the decision in *Golden Services* would compel a different result. *See id. See also Golden Services*, No. A-1-CA-36987, mem. op. The Taxpayer's receipts meet the statutory and regulatory criteria[13] for the deduction. *See id. See also* NMSA 1978, § 7-9-93. The Taxpayer meets the expanded definition of a health care practitioner under the regulation. *See* 3.2.241.13 NMAC. Therefore, the Taxpayer may

[11] An LLC.
[12] Again, the most current version of the statute has essentially codified the regulation. *See* H.B. 98.
[13] Receipts from managed health care providers for commercial contract services performed by health care practitioners within the scope of their practice, who are employees of the Taxpayer.

claim the deduction under Section 7-9-93. *See* NMSA 1978, § 7-9-93. *See also* 3.2.241.13 NMAC. *See also Golden Services*, No. A-1-CA-36987, mem. op. (allowing health care practitioners to take the deduction and upholding the regulation that expands health care practitioners to include business entities).

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely, written protest of the Department's assessment and jurisdiction lies over the parties and the subject matter of this protest.

B. The first hearing was timely set and held within 90 days of the request for hearing. *See* NMSA 1978, § 7-1B-8 (2019).

C. From 2013 to 2016, receipts from payments by a managed health care provider for commercial contract services provided by a health care practitioner within the scope of their practice may be deducted. *See* NMSA 1978, § 7-9-93 (2007).

D. From 2016 to 2019, receipts of a health care practitioner for commercial contract services paid by a managed health care provider may be deducted. *See* NMSA 1978, § 7-9-93 (2016).

E. Under both versions of the statute, the regulations have interpreted the statute to allow for legal entities to claim the deduction, if they are not certain types of health care facilities. *See* 3.2.241.13 and 3.2.241.17 NMAC (2006).

F. The regulations are presumptively a proper interpretation of the statute. *See* NMSA 1978, § 9-11-6.2. *See also Golden Services*, No. A-1-CA-36987, mem. op.

G. The Taxpayer's receipts were from managed health care providers for commercial contract services provided by health care practitioners within the scope of their practice, and the health care practitioners were employed by the Taxpayer. Therefore, the Taxpayer met the

statutory and regulatory criteria for claiming the deduction. *See* NMSA 1978, § 7-9-93. *See also* 3.2.241.13 NMAC.

H. The Taxpayer is not a 501 (C) (3) organization, an HMO, a hospital, a hospice, a nursing home, or an outpatient facility or intermediate care facility licensed under the Public Health Act. Therefore, the Taxpayer is not prohibited from claiming the deduction. *See* NMSA 1978, § 7-9-93. *See also* 3.2.241.13 and 3.2.241.17 NMAC. *See also Golden Services*, No. A-1-CA-36987, mem. op.

For the foregoing reasons, the Taxpayer's protest **IS GRANTED**. **IT IS ORDERED** that the assessment be abated.

DATED: May 27, 2021.

Dee Dee Hoxie

Dee Dee Hoxie
Hearing Officer
Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates the requirements of perfecting an appeal of an administrative decision with the Court of Appeals. Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative Hearings Office may begin preparing the record proper. The parties will each be provided with a

copy of the record proper at the time of the filing of the record proper with the Court of Appeals, which occurs within 14 days of the Administrative Hearings Office receipt of the docketing statement from the appealing party. *See* Rule 12-209 NMRA.

CERTIFICATE OF SERVICE

On May 27, 2021, a copy of the foregoing Decision and Order was submitted to the parties listed below in the following manner:

Email ***Email***

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John Griego
Legal Assistant
Administrative Hearings Office
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