

1 **STATE OF NEW MEXICO**
2 **ADMINISTRATIVE HEARINGS OFFICE**
3 **TAX ADMINISTRATION ACT**

4 **IN THE MATTER OF**
5 **ALTA VISTA REGIONAL HOSPITAL**
6 **TO DENIAL OF REFUND ISSUED UNDER LETTER**
7 **ID NOs. L0939764016 and L1009436976**

8 **v.** **Case No. N/A, D&O 23 - 01**

9 **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

10 **DECISION AND ORDER**
11 **GRANTING SUMMARY JUDGMENT FOR DEPARTMENT**

12 This matter came before the Administrative Hearings Office, Hearing Officer Chris
13 Romero, Esq., upon the following: (1) Department’s Motion For Summary Judgment and Brief
14 in Support (filed July 15, 2022) (“Department’s Motion”); (2) Alta Vista Regional Hospital’s
15 Response to Taxation and Revenue Department’s Motion for Summary Judgment (filed July 29,
16 2022) (“Taxpayer’s Response”¹); (3) Alta Vista Regional Hospital’s Motion for Partial
17 Summary Judgment (filed August 29, 2022) (“Taxpayer’s Motion”); and (4) Department’s
18 Response to Alta Vista’s Motion for Summary Judgment (filed September 6, 2022)
19 (“Department’s Response”).

20 A hearing on the foregoing motions was held on November 28, 2022. Alta Vista Regional
21 Hospital (“Taxpayer”) appeared by and through Mr. Wade Jackson, Esq. The Taxation and
22 Revenue Department (“Department”) appeared by and through Mr. David Mittle, Esq. Hearing
23 Officer Dee Dee Hoxie was also present.

24 The facts and legal issues presented concentrate on whether Taxpayer, a hospital, is eligible
25 to deduct any portion of its gross receipts pursuant to NMSA 1978, Sections 7-9-77.1 or 7-9-93.

¹ Taxpayer’s Response explicitly incorporated by reference the arguments contained in Carlsbad Medical Center’s Response to Taxation and Revenue Department’s Motion for Summary Judgment filed on July 29, 2022. The incorporated response is subject of D&O 23-2 issued on January 13, 2023.

1 Since the application of Section 7-9-93 presents a question of law that was resolved in favor
2 of the Department in *Golden Services Home Health and Hospice and Unnamed Nursing*
3 *and Rehabilitation Center v. Taxation and Revenue Dep't*, No. A-1-CA-36987, 2020 WL
4 2045956, mem. op. (NMCA, April 20, 2020) (non-precedential), *cert. denied*, No. S-1-
5 SC-38341 (NMSC, November 17, 2020), the Hearing Officer finds that Taxpayer is not
6 legally entitled to the deduction. The Hearing Officer also finds that Taxpayer is not
7 eligible to claim a deduction under Section 7-9-77.1.

8 For these reasons, which will be addressed in further detail, the Department's
9 Motion should be granted, and Taxpayer's Motion and protest should be denied.
10 Additionally, a prior order of the tribunal entered December 7, 2017, prior to *Golden*
11 *Services*, which denied summary judgment to the Department, should be set aside in
12 favor of this order. IT IS DECIDED AND ORDERED AS FOLLOWS:

13 FINDINGS OF FACT

14 Material Facts

15 1. Alta Vista Regional Hospital is a hospital and part of Quorum Health Corporation
16 which is one of the largest providers of general hospital healthcare services in the United States.
17 It is located in Las Vegas, NM and is a 54-bed facility which provides inpatient, outpatient,
18 medical, surgical, diagnostic and emergency care. [Department's Motion; Administrative File
19 (Protest)]

20 2. Under Letter Id. No. L0939764016:

- 21 a. the applicable period is January 1, 2013 through December 31, 2014.
- 22 b. the Application for Refund was filed August 19, 2016.
- 23 c. Refund is sought under NMSA Section 7-9-93 (2016) plus administrative
24 fees.

25 [Department's Motion; Administrative File (Protest)]

1 3. Under Letter Id. No. L100936976:

- 2 a. the applicable period is January 1, 2015 through December 31, 2015.
3 b. The Application for Refund was filed June 29, 2016.
4 c. Refund is sought under NMSA Section 7-9-77.1 and Section 7-9-93
5 (2007), plus administrative fees.

6 [Department’s Motion; Administrative File (Protest)]

7 4. On February 3, 2017, the Department issued a denial of Taxpayer’s requested
8 refund under Letter ID No. L0939764016. [Administrative File (accompanying Hearing Request
9 filed April 18, 2017)]

10 5. The denial under Letter ID No. L0939764016 explained that the refund of
11 \$588,176.00 for the period ending December 14, 2014 “has been reviewed and denied.” It went
12 on to explain that “[a] Request for Additional Information notice was mailed to you on
13 December 13, 2016” and that the requested information was not received by the deadline of
14 January 15, 2017. [Administrative File (accompanying Hearing Request filed April 18, 2017)]

15 6. On February 14, 2017, the Department issued a denial of Taxpayer’s requested
16 refund under Letter ID No. L1009436976. [Administrative File (accompanying Hearing Request
17 filed April 18, 2017)]

18 7. The denial under Letter ID No. L1009436976 explained that the refund of
19 \$441,614.00 for the period ending December 14, 2015 “has been reviewed and denied.” It went
20 on to explain that “[a] Request for Additional Information notice was mailed to you on
21 December 15, 2016” and that the requested information was not received by the deadline of
22 January 15, 2017. [Administrative File (accompanying Hearing Request filed April 18, 2017)]

23 8. On February 21, 2017, Taxpayer’s Formal Protest of the Department denial under
24 Letter ID No. L0939764016 was stamped received in the Department’s Protest Office.
25 [Administrative File (accompanying Hearing Request filed April 18, 2017)]

1 Procedural History
2 *(Pre Golden Services)*

3 The Hearing Officer intentionally omits events which are immaterial to the issues under
4 consideration or which are unnecessary for establishing a historical setting for the ensuing
5 discussion. A comprehensive history of the protest may be acquired by referring to the
6 administrative file.

7 9. On March 8, 2017, the Department acknowledged Taxpayer protests under Letter
8 ID No. L1226987824 and Letter ID No. L0914581808. [Administrative File (accompanying
9 Hearing Request filed April 18, 2017)]

10 10. On April 18, 2017, the Department filed a Hearing Request in the matter of
11 Taxpayer's protest. [Administrative File]

12 11. On April 21, 2017, the Administrative Hearings Office entered a Notice of
13 Telephonic Scheduling Conference which set an initial hearing to occur on May 15, 2017.
14 [Administrative File]

15 12. An initial telephonic scheduling hearing occurred on May 15, 2017. Neither party
16 objected that that hearing satisfied the 90-day hearing deadline of NMSA 1978, Section 7-1B-8
17 (A).

18 13. On May 16, 2017, the Administrative Hearings Office entered a Scheduling Order
19 and Notice of Administrative Hearing. [Administrative File]

20 14. On May 26, 2017, the Department filed Taxation and Revenue Department's
21 Motion for Partial Summary Judgment. [Administrative File]

22 15. On July 10, 2017, Taxpayer timely filed Alta Vista Regional Hospital's Response
23 to Taxation and Revenue Department's Motion for Partial Judgment on the Protest.
24 [Administrative File]

1 16. On October 13, 2017, the Department filed Department’s Reply Brief.
2 [Administrative File]

3 17. On October 12, 2017, Taxpayer filed Alta Vista Regional Hospital’s Sur-Reply to
4 Taxation and Revenue Department’s Reply to Hospital’s Response to Department’s Motion for
5 Partial Judgment on the Protest. [Administrative File]

6 18. On October 27, 2017, Taxpayer filed Alta Vista Regional Hospital’s
7 Supplemental Brief on the Constitutional Prohibitions Against Retroactive Operation of the
8 Senate Bill 6. [Administrative File]

9 19. On October 27, 2017, the Department filed Department’s Brief Addressing
10 Article IV, Section 24 of the New Mexico Constitution. [Administrative File]

11 20. On December 7, 2017, the Administrative Hearings Office entered an Order
12 Denying Department’s Motion for Partial Summary Judgement. [Administrative File]

13 21. On December 21, 2017, Taxpayer filed Taxpayer’s Motion for Summary
14 Judgment. [Administrative File]

15 22. On January 5, 2018, the Department filed Department’s Response to Motion for
16 Summary Judgment. [Administrative File]

17 23. On January 18, 2018, the Department filed Taxation and Revenue Department’s
18 Notice of Filing Appeal and Motion to Stay explaining that “[b]ecause the determinative issue of
19 whether the Taxpayer is entitled to a deduction under Section 7-9-93 is before the Court of
20 Appeals, this protest should be stayed.” Taxpayer did not oppose the request to stay the
21 proceeding. [Administrative File]

22 24. The Hearing Officer takes administrative notice that the appeal subject of the

1 Department's request was *Golden Services* and a second, unnamed² nursing home facility.

2 25. On January 22, 2018, Taxpayer and the Department filed a Joint Prehearing
3 Statement. The Joint Prehearing Statement explained that the unresolved issue was “[w]hether
4 taxpayer is entitled to a deduction under either Section 7-9-93 or 7-9-77.1 for the tax years at
5 issue.” The parties also disputed the sufficiency of documentation provided to substantiate the
6 amount of the refund sought if the legal question were resolved in Taxpayer's favor.

7 [Administrative File]

8 26. On January 24, 2018, the Department filed Department's Motion to Reconsider
9 the Hearing Officer's Order Denying Department's Motion for Partial Summary Judgement
10 entered December 7, 2017. [Administrative File]

11 27. On January 24, 2018, Taxpayer filed Taxpayer's Response to Department's
12 Motion to Reconsider. [Administrative File]

13 28. On January 25, 2018, the Administrative Hearings Office entered an Order
14 Vacating Hearing on Merits and Staying Protest Pending Appeal. The order provided that the
15 “protest shall be stayed pending further court order in the appeal underlying the Department's
16 motion[.]” The order further provided that the “parties shall make reasonable effort to keep the
17 Administrative Hearings Office reasonably informed of the status of the appeal[.]”³

18 [Administrative File]

19 *Post Golden Services*

20 29. On April 20, 2020, the New Mexico Court of Appeals entered its decision in the

² The taxpayer in the appeal accompanying *Golden Services* was unnamed since the order from which the appeal arose was interlocutory in nature, not a final Decision and Order, and therefore not subject to disclosure under NMSA 1978, Section 7-8-1.3 D.

³ This protest is one of approximately 60 protests that were stayed pending the outcome of *Golden Services*. As of the date this order is entered, the vast majority remain pending. However, the Administrative Hearings Office has directed a course of action with the relevant party representatives to move these cases toward an expeditious resolution.

1 appeal for which the protest was stayed. *See Golden Services Home Health & Hospice v.*
2 *Taxation & Revenue Dep't*, A-1-CA-36987, 2020 WL 2045956 (Apr. 20, 2020) (non-
3 precedential)

4 30. On April 15, 2021, in the absence of any overt activity in this matter since
5 issuance of the mandate, the Administrative Hearings Office Proposed Summary Disposition
6 consistent with the holding expounded by *Golden Services*. [Administrative File]

7 31. On April 30, 2021, Taxpayer filed Taxpayer's Response and Objection to the
8 Hearing Officer's Proposed Summary Disposition. [Administrative File]

9 32. On June 2, 2021, the Administrative Hearings Office entered an Order to Conduct
10 Informal Conference and Notice of Telephonic Scheduling Hearing. [Administrative File]

11 33. On July 14, 2021, the Administrative Hearings Office entered a Briefing Schedule
12 for Dispositive Motions, Responses, and Replies. The order permitted the parties to stipulate to
13 extensions of deadlines without need for an order of the Administrative Hearings Office so long
14 as their agreement was mutual and memorialized in writing. [Administrative File]

15 34. On June 9, 2022, approximately eleven months after the Administrative Hearings
16 Office entered its briefing schedule on July 14, 2021, and nearly 26 months after entry of *Golden*
17 *Services*, the Administrative Hearings Office entered Order Modifying Briefing Schedule for
18 Dispositive Motions, Responses and Replies. The order set firm deadlines for filing the
19 dispositive motions contemplated by the parties in July of 2021⁴. [Administrative File]

20 35. On June 14, 2022, the Department filed Department's Motion to Vacate Order

⁴ Again, cognizant of the number of cases held in abeyance pending the *Golden Services* appeal, and with desire to efficiently manage and resolve those cases on the docket, the Administrative Hearings Office developed a strategy to get all related cases moving in stages towards an efficient resolution. The AHO acknowledges that this docket management plan created a great deal of work for the individual representatives in these cases and wishes to thank them for their difficult but necessary work in moving these cases closer to final resolution.

1 Modifying Briefing Schedule for Dispositive Motions, Responses, and Replies as well as a
2 separate Unopposed Motion to Exceed Page Limit. [Administrative File]

3 36. On June 27, 2022, the Administrative Hearings Office informally notified the
4 parties by email that it would consider reasonable alternatives to the order entered on June 9,
5 2022 and encouraged the parties to confer and respond by motion on or before July 1, 2022.
6 [Administrative File]

7 37. On July 6, 2022, the parties filed a Joint Motion to Extend Briefing Schedule.
8 [Administrative File]

9 38. On July 15, 2022, the Administrative Hearings Office entered an Amended Order
10 Modifying Briefing Schedule for Dispositive Motions, Responses, and Replies (Hospitals).
11 [Administrative File]

12 39. On July 15, 2022, the Department filed Department's Motion for Summary
13 Judgment and Brief in Support. [Administrative File]

14 40. On July 25, the Department filed Department's Objection to Amended Order
15 Modifying Briefing Schedule for Dispositive Motions, Responses, and Replies. [Administrative
16 File]

17 41. On July 29, 2022, Taxpayer filed Alta Vista Regional Hospital's Response to
18 Taxation and Revenue Department's Motion for Summary Judgment. [Administrative File]

19 42. On August 3, 2022, the Administrative Hearings Office entered Order on
20 Department's Objection to Amended Order Modifying Briefing Schedule for Dispositive
21 Motions, Responses, and Replies. [Administrative File]

22 43. On August 29, 2022, Taxpayer filed Alta Vista Regional Hospital's Motion for
23 Partial Summary Judgment. [Administrative File]

1 44. On September 6, 2022, the Department filed Department’s Response to Alta
2 Vista’s Motion for Summary Judgment. [Administrative File]

3 **DISCUSSION**

4 The facts and legal issues presented concentrate on whether Taxpayer, a hospital, is eligible
5 to deduct any portion of its gross receipts pursuant to NMSA 1978, Sections 7-9-77.1 or 7-9-93.

6 Although the parties continue to dispute the sufficiency of documents provided to substantiate the
7 refund claimed, a ruling in favor of the Department on the legal entitlement to deductions under
8 Section 7-9-77.1 and Section 7-9-93 renders that specific factual dispute moot.

9 In controversies involving a question of law, or application of law where there are no
10 disputed facts, summary judgment is appropriate. *See Koenig v. Perez*, 1986-NMSC-066, ¶10-
11 11, 104 N.M. 664. If the movant for summary judgment makes a prima facie showing that it is
12 entitled to a judgment as a matter of law, the burden shifts to the opposing party to show
13 evidentiary facts that would require a trial on the merits. *See Roth v. Thompson*, 1992-NMSC-
14 011, ¶17, 113 N.M. 331.

15 The issues presented in this case are appropriate for summary judgment. The question is
16 whether Taxpayer is legally entitled to claim deductions under NMSA 1978, Sections 7-9-77.1
17 and 7-9-93.

18 **Burden of Proof**

19 “[T]axation is the rule and the claimant must show that his demand is within the letter as
20 well as the spirit of the law.” *See TPL, Inc. v. New Mexico Taxation & Revenue Dept.*, 2003-
21 NMSC-007, ¶ 9, 133 N.M. 447, 451, 64 P.3d 474, 478 (*quoting Rauscher, Pierce, Refsnes, Inc.*
22 *v. Taxation & Revenue Dep’t*, 2002–NMSC–013, ¶ 11, 132 N.M. 226, 46 P.3d 687.

23 The Gross Receipts and Compensating Tax Act, for the privilege of engaging in business,

1 imposes excise taxes of specified percentages on gross receipts on any person engaging in
2 business in New Mexico. “To prevent evasion of the gross receipts tax and to aid in its
3 administration, it is presumed that all receipts of a person engaging in business are subject to the
4 gross receipts tax. *See* NMSA 1978, Section 7-9-4 (2010, Amended 2022). For the purpose of
5 enforcing the tax, there is a presumption that all receipts of a person engaging in business in New
6 Mexico are subject to gross receipts tax. *See* Section 7-9-5(A) (2019).

7 Taxpayers may, however, reduce their gross receipts tax obligations by availing
8 themselves of deductions and exemptions authorized by the Legislature. “[D]eductions are a
9 matter of legislative grace and a way of achieving [the Legislature’s] policy objectives.” *See*
10 *Sutin, Thayer & Browne v. Revenue Div. of Taxation & Revenue Dept.*, 1985-NMCA-047, ¶ 17,
11 104 N.M. 633, 636, 725 P.2d 833, 836. The right to a deduction must be clear and unambiguous
12 with a strict construction against the taxpayer. *Sec. Escrow Corp. v. State Taxation and Revenue*
13 *Dep’t.*, 1988-NMCA-068, ¶ 8, 107 N.M. 540. *See also* *Wing Pawn Shop v. Taxation and*
14 *Revenue Dep’t.*, 1991-NMCA-024, ¶ 16, 111 N.M. 735. *See also* *Chavez v. Commissioner of*
15 *Revenue*, 1970-NMCA-116, ¶ 7, 82 N.M. 97. *See also* *Pittsburgh and Midway Coal Mining Co.*
16 *v. Revenue Division*, 1983-NMCA-019, 99 N.M. 545.

17 Consequently, “[a] taxpayer has the burden of showing that it comes within the terms of a
18 statute permitting a tax deduction. *See Sutin, Thayer & Browne*, 1985-NMCA-047, ¶ 17. A
19 “deduction must be denied in the absence of a showing of clear legislative intent to permit the
20 deduction.” *See Sutin, Thayer & Browne*, 1985-NMCA-047, ¶ 18.

21 Even if a taxpayer can establish a legal entitlement to a deduction, a taxpayer seeking a
22 refund must support the amount of the refund claimed with credible documentation. *See* NMSA
23 1978, Section 7-1-26 (A) (5) and (C) (2019). Accordingly, it is not enough that a taxpayer

1 establishes a legal right to a refund, but it must also come forward with evidence to establish the
2 facts supporting the amount of the refund. *See TPL, Inc.*, 2003-NMSC-007, ¶ 9.

3 In this case, while Taxpayer claims it is eligible for a deduction under either Section 7-9-
4 77.1 or Section 7-9-93, the Department argues, that because a hospital's deductions are limited to
5 Section 7-9-73.1, neither Section 7-9-77.1 nor Section 7-9-93 are applicable. Under the facts
6 presented in this protest, the Department is correct.

7 As a preliminary and overarching observation pertinent to the Department's assertion, it
8 relies on the rule of statutory construction instructing that "[a] conferral of specific authority
9 trumps any previous conferral of general authority." *See Matter of Estate of McElveny*, 2017-
10 NMSC-024, ¶ 21, 399 P.3d 919. The legislature has specifically addressed hospitals and those
11 particular deductions from gross receipts for which they qualify. *See* Section 7-9-73.1. Except for
12 costs incurred in the construction of hospitals, the Department asserts that the Legislature has not
13 explicitly provided hospitals any other deduction from gross receipts other than Section 7-9-73.1.
14 The Department's argument, in conjunction with the holding of *Golden Services* persuasively
15 establishes that the Legislature did not intend to confer eligibility for a hospital to claim a gross
16 receipts deduction under Section 7-9-77.1 or Section 7-9-93.

17 The discussion will begin with the application of Section 7-9-93 which the Hearing
18 Officer perceives to be the crux of the dispute at hand.

19 Application of Section 7-9-93 to Hospitals

20 As counsel are aware, application of Section 7-9-93 to entities, such as hospitals, has
21 been considered several times by this tribunal. Although this tribunal has previously ruled⁵ that
22 hospitals could qualify for the deduction provided by Section 7-9-93, the Court of Appeals in

⁵ *See e.g. In the Matter of the Protest of HealthSouth Rehabilitation*, D&O No. 16-16, 2016 WL 2958471 (May 11, 2016) (non-precedential)

1 *Golden Services*, an unpublished decision, concluded that Section 7-9-93 does not permit entities
2 such as hospitals to claim a deduction from gross receipts. Instead, the deduction is limited to
3 receipts received for the services of individual health care practitioners.

4 Section 7-9-93 (A) (2007) provides:

5 Receipts from payments by a managed health care provider or
6 health care insurer for commercial contract services or medicare
7 part C services provided by a health care practitioner ... may be
8 deducted from gross receipts[.]

9 *Golden Services* found the statute to be ambiguous which prompted it to evaluate “other
10 indicia of legislative intent such as the statute’s purpose and legislative history.” *See Golden*
11 *Services*, ¶ 15. In doing so, the Court of Appeals found that gross receipts must flow to the
12 individual practitioner and not, for example, the hospital that employs it.

13 In *Golden Services*, the Court of Appeals framed the issue as “whether the statutory
14 deduction set forth in Section 7-9-93(A) is available to health care facilities like Taxpayers ... or
15 instead, is only available to health care practitioners, as the Department contends.” *See Golden*
16 *Services*, ¶ 12.

17 The Court ultimately agreed that the Department’s position reflected the intention of the
18 Legislature when it enacted Section 7-9-93. It explained:

19 Given the [Fiscal Impact Reports] and the bill titles, the
20 Department’s presumptively correct regulations, Taxpayers’
21 burden to establish its entitlement to the deduction, and most
22 importantly, the possible interpretation of the statute’s language
23 itself that the deduction is limited only to health care practitioners,
24 we conclude that, *Taxpayers, as health care facilities*, and not
25 individual practitioners, *are not entitled to claim the deduction.*

26 *See Golden Services*, ¶ 24 (Emphases Added)

27 The Court also explained that a 2016 amendment to Section 7-9-93:

28 -finalizes once and for all that the Legislature does not intend to
29 bestow a tax deduction to simply “any taxpayer” and thus non-

1 practitioner transactions do not fall within the purview of Section
2 7-9-93 (2016).

3 *See Golden Services*, ¶ 26.

4 In the special concurrence, Judge Ives further observed:

5 [T]he titles of the bills that amended the statute at issue, resulting
6 in the 2007 version, indicate that the Legislature intended to limit
7 the deduction to health care practitioners.

8 *See Golden Services*, ¶¶ 37, 38 (Ives, J. specially concurring).

9 As part of its evaluation, *Golden Services* also observed that the two regulations directly
10 addressing the applicability of the deduction under Section 7-9-93 were presumptively proper
11 interpretations of the statute. *See Golden Services*, ¶ 21; *See also* Regulations 3.2.241.13 and
12 3.2.241.17 NMAC (2006).

13 The purpose of the Department’s regulations is “to interpret, exemplify, implement and
14 enforce the provisions of the Gross Receipts and Compensating Tax Act.” *See* Regulation 3.2.1.6
15 NMAC (2001). The Department has authority to enact regulations that interpret and exemplify
16 the statutes to which they relate. *See* NMSA 1978, Section 9-11-6.2 (B) (1) (2015). The
17 Department’s regulations also carry a presumption that they are a “proper implementation of the
18 provisions of the laws”. NMSA 1978, Section 9-11-6.2 (G). *See also Chevron U.S.A. Inc. v.*
19 *State ex rel. Taxation and Revenue Dep’t*, 2006-NMCA-050, ¶ 16, 139 N.M. 498 (holding that
20 agency regulations that interpret a statute are presumed to be proper). Regulations are also to be
21 interpreted in accordance with legislative intent and in a manner that does not lead to an absurd,
22 unreasonable, or unjust result. *See Hess Corp. v. N.M. Taxation & Revenue Dep’t*, 2011-NMCA-
23 043, 149 N.M. 527 *See also Johnson v. NM Oil Conservation Com’n*, 1999-NMSC-021, 127 NM
24 120 (holding that canons of construction that apply to statutes also apply to rules and regulations).

1 One regulation prohibits “[a]n organization, whether or not owned exclusively by health
2 care practitioners, licensed as a hospital, hospice, nursing home, ... an outpatient facility or
3 intermediate care facility” from taking the deduction. *See* Regulation 3.2.241.17 NMAC (2006).
4 The regulation indicates that such a facility “is not a ‘health care practitioner’ as defined by
5 Section 7-9-93”. *Id.* The other regulation actually allows for “[a] corporation, unincorporated
6 business association, or other legal entity” to take the deduction for payments on services
7 performed “on its behalf by health care practitioners who own or are employed by the
8 corporation, unincorporated business association or other legal entity.” *See* Regulation
9 3.2.241.13 NMAC (2006). However, the regulation creates an exception to that allowance when
10 that entity is a 501 (C) (3) organization or “an HMO, hospital, hospice, nursing home, an ...
11 outpatient facility or intermediate care facility”. *Id.* These excepted entities may not take the
12 deduction. *See id.*

13 The parties stipulated that Taxpayer is a hospital. Hospitals are not health care
14 practitioners and for that reason, are not eligible to claim the deduction under Section 7-9-93 and
15 the regulations implementing it. *See* 3.2.241.13 and 3.2.241.17 NMAC. *See also Golden*
16 *Services*, No. A-1-CA-36987.

17 Nonetheless, Taxpayer asserts that *Golden Services* should not be afforded persuasive
18 value because it is an unpublished decision and because it was “wrongly decided.” Taxpayer
19 encourages the tribunal to decide the protest consistent with its prior decisions contrary to the
20 holding of *Golden Services*. In effect, Taxpayer asks the tribunal to disregard the ruling of the
21 Court of Appeals simply because it was an unpublished opinion and because Taxpayer prefers its
22 previous decisions premised on a statutory construction of the deduction now rejected by the
23 Court of Appeals in *Golden Services*. This argument is inconsistent with the limited quasi-

1 judicial statutory role of the Administrative Hearings Office and the broader principle of an
2 ordered, adjudicative process, where a lower administrative tribunal must show deference and
3 respect to the legal rulings of a court of superior jurisdiction. *See Bd. of Cnty. Commissioners,*
4 *Harding Cnty. v. New Mexico Taxation & Revenue Dep't*, 2021-NMSC-007 fn2, 480 P.3d 870,
5 878 (albeit within the context of a convoluted and confusing procedural posture, the Supreme
6 Court made clear the broader principle that AHO does not have authority to overrule a prior
7 judicial construction of a statute).

8 This position also contradicts prior representations of the parties that this protest would
9 be informed by the decision in *Golden Services*, which Taxpayer now argues should be
10 disregarded because it is an unpublished decision which has no precedential value.

11 Taxpayer is correct that an unpublished decision is not controlling precedent. *See* Rule 12-
12 405 NMRA (2012). *See also Hess Corp. v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-043,
13 ¶ 35, 149 N.M. 527 (indicating that unpublished opinions and orders are written solely for the
14 benefit of the parties and have no controlling precedential value). *See also Inc. County of Los*
15 *Alamos v. Montoya*, 1989-NMCA-004, ¶ 6, 108 N.M. 361 (noting that unpublished caselaw is
16 not binding precedent). *See State v. Granillo-Macias*, 2008-NMCA-021, ¶ 11, 143 N.M. 455
17 (noting that unpublished orders, decisions, and opinions are not controlling and are written solely
18 for the benefit of the parties). *See State v. Gonzales*, 1990-NMCA-040, ¶ 47-48, 110 N.M. 218
19 (noting that unpublished orders, decisions, and opinions are not meant to be controlling authority
20 and that they rarely describe the context of the issue at length, which may be of controlling
21 importance to the decision).

22 However, unpublished decisions may nevertheless be cited for their persuasive
23 significance. *See* Rule 12-405 NMRA (stating that unpublished decisions are not precedent but

1 may still be persuasive). *See also State v. Stevenson*, 2020-NMCA-005, ¶ 25 (considering an
2 unpublished decision for its persuasive value), *cert. denied*, No. S-1-SC-38015 (December 26,
3 2019).

4 *Golden Services* dealt primarily with the legal applicability of Section 7-9-93, the same
5 deduction at issue here (and in roughly 60 other protests that were stayed pending its issuance,
6 the majority of which remain pending). Thus, *Golden Services* is highly persuasive as to the legal
7 applicability of the deduction and should be applied to the facts of this case.

8 Second, the Court of Appeals has recently rejected the contention that *Golden Services*
9 was “wrongly decided.” The Court of Appeals in *Four Corners Healthcare v. N. Mex. Taxation*
10 *and Revenue Dept.*, A-1-CA-38869, ¶ 8. (Memorandum Opinion entered Dec. 14, 2022) (non-
11 precedential), explained:

12 Taxpayer argues that *Golden Services* is not binding and was
13 ‘wrongly decided,’ and it urges this Court to review the motion for
14 rehearing filed in *Golden Services* and to rely on *In the Matter of*
15 *the Protest of HealthSouth Rehabilitation*, No. 16-16, 2016 WL
16 2958471 (N.M. Tax’n & Revenue Dep’t May 11, 2016) (dec. &
17 order), which is the written decision of an administrative hearing
18 officer. These assertions provide no reason in this case to divert
19 from the conclusion of this Court in *Golden Services*.

20 The Hearing Officer is not inclined to divert from the Court’s reasoning and conclusion
21 in *Golden Services*. The Hearing Officer respects the guidance provided by *Golden Services* and
22 will faithfully adhere to its reasoning and conclusion.

23 The Department presented several other arguments to support and solidify its position⁶
24 regarding the application and limitations of Section 7-9-93, but the Hearing Officer need not
25 address those since *Golden Services* resolves the question of statutory construction over which

⁶ Because *Golden Services* is unpublished, counsel presented several arguments anew. They were carefully considered but need not be addressed in detail given the highly persuasive value of *Golden Services* and the Court’s subsequent rejection in *Four Corners* that *Golden Services* was “wrongly decided.”

1 the parties quarrel without need for further discussion.

2 In conclusion, the deduction provided by Section 7-9-93 (2007) is limited to individual
3 health care practitioners. Hospitals are not eligible. *See Golden Services*, ¶ 24.

4 Application of Section 7-9-77.1 to Hospitals

5 The next deduction presented for consideration is Section 7-9-77.1 which the Department
6 also contends is not available to hospitals. The Hearing Officer agrees, especially in light of the
7 structural similarities between Section 7-9-93 and Section 7-9-77.1. Those similarities
8 demonstrate the Legislature’s parallel policy objectives and intention that Section 7-9-93 and
9 Section 7-9-77.1 be construed similarly.

10 Section 7-9-77.1 (2007) provided:

11 A. Receipts from payments by the United States government
12 or any agency thereof for provision of medical and other health
13 services by medical doctors, osteopathic physicians, doctors of
14 oriental medicine, athletic trainers, chiropractic physicians,
15 counselor and therapist practitioners, dentists, massage therapists,
16 naprapaths, nurses, nutritionists, dietitians, occupational therapists,
17 optometrists, pharmacists, physical therapists, psychologists,
18 radiologic technologists, respiratory care practitioners,
19 audiologists, speech-language pathologists, social workers and
20 podiatrists or of medical, other health and palliative services by
21 hospices or nursing homes to medicare beneficiaries pursuant to
22 the provisions of Title 18 of the federal Social Security Act may be
23 deducted from gross receipts.

24 Section 7-9-77.1 (A) was amended in 2016 to provide that:

25 A. Receipts of a health care practitioner from payments by the
26 United States government or any agency thereof for provision of
27 medical and other health services by a health care practitioner or of
28 medical or other health and palliative services by hospices or
29 nursing homes to medicare beneficiaries pursuant to the provisions
30 of Title 18 of the federal Social Security Act may be deducted
31 from gross receipts.

32 The 2016 version defined “health care practitioner” in Section 7-9-77.1 I (3) to include
33 specified fields of relevant practice similar to that observed in Section 7-9-93, including licensed

1 athletic trainers (3) (a), audiologists (3) (b), dentists (3) (f), and other individual areas of practice,
2 just to name a few. Similar to observations of Section 7-9-93, “hospital” is not included in the
3 list of eligible taxpayers.

4 The Legislature also explicitly made the deduction available to clinical laboratories
5 (subsection “C”), home health agencies (subsection “D”), and dialysis facilities (subsection “F”).
6 The language used by the Legislature demonstrates that it has not extended the same grace to
7 “hospitals,” recognizing that when the Legislature intends to confer a tax benefit on a hospital,
8 that it has historically used the term, “hospital.” *Compare* Section 7-9-73.1 A (2019) (“Sixty
9 percent of the receipts of *hospitals licensed by the department of health* may be deducted from
10 gross receipts...” (Emphasis Added); Section 7-9-73.1 (2007) (“Fifty percent of the receipts of
11 *hospitals licensed by the department of health* may be deducted from gross receipts...”)
12 (Emphasis Added)

13 The fact that the Legislature omitted “hospitals” from the list of eligible taxpayers,
14 similar to observations made in Section 7-9-93 as construed by *Golden Services*, establishes the
15 intention of the Legislature to preclude hospitals from claiming the deduction provided by
16 Section 7-9-77.1.

17 The Legislature’s approach to drafting Section 7-9-77.1 was similar to its approach to
18 Section 7-9-93 and they should be construed in like manner. Since the 2007 versions of both
19 statutes began with “[r]eceipts from payments” and the 2016 versions were both amended to
20 “[r]eceipts of a health care practitioner”, it stands to reason that the same statutory interpretation
21 should apply to both statutes. *See* NMSA 1978, Section 7-9-77.1 (2007) and (2016) and Section
22 7-9-93 (2007) and (2016). *See also Golden Services*, No. A-1-CA-36987.

23 Consequently, the absence of an explicit reference to “hospitals” in the statute

1 demonstrates the Legislature’s intention to exclude hospitals from eligibility and therefore, from
2 the grace conferred on those individuals and entities specifically referenced in Section 7-9-77.1.

3 This conclusion is reinforced by the Department’s in-depth discussion of the statute’s
4 legislative history and policies the Legislature sought to promote, going way back to its inception
5 in 1998 through the act’s most recent iteration. The Department’s extraction and discussion of
6 legislative history is persuasive and in harmony with the plain language of the statute.

7 These observations persuaded the Hearing Officer that if the Legislature intended
8 hospitals to claim any deduction under Section 7-9-77.1, it would have explicitly provided that
9 right in the statute, as similarly observed in *Golden Services*. See also *Pub. Serv. Co. of New*
10 *Mexico v. Diamond D Const. Co., Inc.*, 2001-NMCA-082, ¶ 50, 131 N.M. 100, 115, 33 P.3d 651,
11 666 (“[S]tatutes concerning similar subject matter, relevant common law principles, and public
12 policy [] guide us in our interpretation.”)

13 For these reasons, hospitals are not entitled to deduct gross receipts under Section 7-9-
14 77.1.

15 Administrative Costs and Fees

16 The Hearing Officer will not address Taxpayer’s request for administrative costs and fees
17 under NMSA 1978, Section 7-1-29.1 (A) (2015) because Taxpayer is not the prevailing party.

18 For that reason, Taxpayer’s request is denied.

19 **CONCLUSION**

20 For the stated reasons, Department’s Motion should be, and hereby is GRANTED.
21 Taxpayer’s Motion should be, and hereby is DENIED. The previous Order Denying
22 Department’s Motion for Partial Judgment, entered prior to *Golden Services* on December 7,
23 2017, should be and hereby is set aside in favor of this order. Taxpayer’s protest should be, and

1 hereby is, DENIED.

2 **CONCLUSIONS OF LAW**

3 A. Taxpayer filed timely, written protests to the denial of its claimed refunds and
4 jurisdiction lies over the parties and the subject matter of this protest.

5 B. The Administrative Hearings Office conducted a timely hearing within 90 days of
6 receipt of the Hearing Request under NMSA 1978, Section 7-1B-8.

7 C. The parties did not object that conducting the scheduling hearing satisfied the 90-
8 day hearing requirements of Section 7-1B-8 (A) while still allowing meaningful time for
9 completion of the other statutory requirements under Section 7-1B-6 (D). *See also* Regulation
10 22.600.3.8 (E) NMAC.

11 D. Hospitals are not entitled to claim a deduction under NMSA 1978, Section 7-9-93.
12 *See Golden Services*; NMSA 1978, Section 7-9-93.

13 E. Hospitals are not entitled to claim a deduction under NMSA 1978, Section 7-9-
14 77.1. *See* NMSA 1978, Section 7-9-77.1.

15 F. Taxpayer is not a prevailing party and not entitled to an award of administrative
16 costs or fees. *See* NMSA 1978, Section 7-1-29.1; *See Helmerich*, 2019-NMCA-054, ¶ 11

17 For the reasons stated, Taxpayer's protest is DENIED.

18 DATED: January 13, 2023

19 

20 Chris Romero
21 Hearing Officer
22 Administrative Hearings Office
23 P.O. Box 6400
24 Santa Fe, NM 87502

1 **NOTICE OF RIGHT TO APPEAL**

2 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this
3 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the
4 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this
5 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates
6 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.
7 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative
8 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative
9 Hearings Office may begin preparing the record proper. The parties will each be provided with a
10 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,
11 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing
12 statement from the appealing party. *See* Rule 12-209 NMRA.
13

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing on the parties listed below this 13th day of
3 January, 2023 in the following manner:

4
5
6 *INTENTIONALLY BLANK*