

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

4 **IN THE MATTER OF THE PROTEST OF**  
5 **CARLSBAD MEDICAL CTR LLC**  
6 **TO DENIAL OF REFUND ISSUED UNDER**  
7 **LETTER ID NO. L2092002608**

8 **and**

**AHO Case No: N/A, D&O 23-02**

9 **IN THE MATTER OF THE PROTEST OF**  
10 **CARLSBAD MEDICAL CENTER LLC**  
11 **TO DENIAL OF REFUND ISSUED UNDER**  
12 **LETTER ID NO. L2061707568**

13 **v.**

14 **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

15 **DECISION AND ORDER**  
16 **GRANTING SUMMARY JUDGMENT FOR DEPARTMENT**

17 This matter came before the Administrative Hearings Office, Hearing Officer Chris  
18 Romero, Esq., upon the following: (1) Department’s Motion For Summary Judgment and Brief  
19 in Support (filed July 15, 2022) (“Department’s Motion”); (2) Carlsbad Medical Center’s  
20 Response to Taxation and Revenue Department’s Motion for Summary Judgment (filed July 29,  
21 2022) (“Taxpayer’s Response”); (3) Alta Vista Regional Hospital’s<sup>1</sup> Motion for Partial Summary  
22 Judgment (filed August 29, 2022) (“Taxpayer’s Motion”); and (4) Department’s Objection and  
23 Response to Motion for Summary Judgement to Non-Lead Hospitals (filed September 6, 2022)  
24 (“Department’s Response”).

25 A hearing on the foregoing motions was held on November 28, 2022. Carlsbad Medical  
26 Center, LLC (“Taxpayer”) appeared by and through Mr. Wade Jackson, Esq. The Taxation and

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<sup>1</sup> Pursuant to the Amended Order Modifying Briefing Schedule for Dispositive Motions, Response and Replies, the Hearing Officer refers to the motion that was filed in the matter of Alta Vista Regional Hospital for Taxpayer’s legal arguments for summary judgment in its favor. The Decision and Order (D&O 23-1) in the protest Alta Vista Regional Hospital was issued on January 13, 2023.

1 Revenue Department (“Department”) appeared by and through Mr. David Mittle, Esq.

2 On the record of this hearing, the parties adopted the arguments that had been made on  
3 the record in the matter of the protest of Alta Vista Regional Hospital, subject of Decision and  
4 Order 23-1 entered on January 13, 2023. The Department had an opportunity to make a  
5 separate record at which time it objected to any facts from the lead case being considered  
6 to establish the amount of Taxpayer’s tax liability in this protest.

7 The facts and legal issues presented concentrate on whether Taxpayer, a hospital, is  
8 eligible to deduct any portion of its gross receipts pursuant to NMSA 1978, Sections 7-9-  
9 77.1 or 7-9-93. Since the application of Section 7-9-93 presents a question of law that was  
10 resolved in favor of the Department in *Golden Services Home Health and Hospice and*  
11 *Unnamed Nursing and Rehabilitation Center v. Taxation and Revenue Dep’t*, No. A-1-  
12 CA-36987, 2020 WL 2045956, mem. op. (NMCA, April 20, 2020) (non-precedential),  
13 *cert. denied*, No. S-1-SC-38341 (NMSC, November 17, 2020), the Hearing Officer finds  
14 that Taxpayer is not legally entitled to the deduction provided by Section 7-9-93 or the  
15 similarly-structured deduction at Section 7-9-77.1. To the extent any residual claims  
16 remain under Section 7-9-54, Section 7-9-67, or Section 7-9-73.2, those claims should  
17 also be denied.

18 Having considered all arguments, the Department’s Motion should be granted,  
19 and Taxpayer’s Motion and protest should be denied. IT IS DECIDED AND ORDERED  
20 AS FOLLOWS:

21 **FINDINGS OF FACT**

22 Material Facts

- 23 1. Carlsbad Medical Center is a hospital. “[It] is part of Community Health Systems,

1 Inc. which is one of the largest providers of general hospital healthcare services in the United  
2 States. Petitioner is located in Carlsbad, NM and is a 115-bed facility with inpatient, outpatient,  
3 diagnostic, medical, surgical and emergency services.” [Department’s Motion; Administrative  
4 File (Protest)]

5 2. Under Letter Id. No. L2092002608:

- 6 a. the applicable period is January 1, 2015 through December 31, 2015.
- 7 b. the Application for Refund was filed March 28, 2017.
- 8 c. Refund is sought under NMSA Section 7-9-93 (2016) plus administrative  
9 fees.<sup>2</sup>

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

11 3. Under Letter Id. No. L2061707568:

- 12 a. the applicable period is January 1, 2013 through December 31, 2014.
- 13 b. The Application for Refund was filed August 19, 2016.
- 14 c. Refund is sought under NMSA Section 7-9-77.1, Section 7-9-93 (2007),  
15 Section 7-9-73.2(A), Section 7-9-67(B), and Section 7-9-54, plus  
16 administrative fees.<sup>3</sup>

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

18 4. On February 3, 2017, the Department issued a denial of Taxpayer’s requested  
19 refund under Letter ID No. L2061707568. [Administrative File (accompanying Hearing Request  
20 filed April 18, 2017)]

21 5. The denial under Letter ID No. L2061707568 explained that the refund of  
22 \$1,738,000.00 for the period ending December 31, 2014 “has been reviewed and denied.” It went

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<sup>2</sup> This statement of fact is reproduced exactly as written by the Department. The fact was uncontested by Taxpayer. The Statement of Grounds in the protest of Letter ID L2092002608 indicated that it was premised on several additional statutes: NMSA 1978, Section 7-9-77.1, Section 7-9-93, Section 7-9-73.2, Section 7-9-67, Section 7-9-54, Section 7-9-96.1, Section 7-1-68, Section 7-9-96.1. *See* Administrative File (Statement of Grounds for protest of Letter ID L2092002608 - Section IV, Paras. 1 – 8 (Sep. 25, 2017))]. Their omission suggests that any disputes relying on those statutes have been resolved or waived.

<sup>3</sup> This statement of fact is reproduced exactly as written by the Department. The fact was uncontested by Taxpayer. However, it appears that this statement may be incorrect to the extent that the initial protest of the Letter ID L2061707568 explicitly stated that there was no actual dispute regarding the application of: NMSA 1978, Section 7-9-77.1, Section 7-9-73.2, Section 7-9-67, and Section 7-9-54. *See* Administrative File (Statement of Grounds for protest of Letter ID L2061707568 - Section IV, Paras. 6 – 9 (Feb. 15, 2017))].

1 on to explain that “[a] Request for Additional Information notice was mailed to you on  
2 November 28, 2016” and that the requested information was not received by the deadline of  
3 December 31, 2016. [Administrative File (accompanying Hearing Request filed April 18, 2017)]

4 6. On July 27, 2017, the Department issued a denial of Taxpayer’s requested refund  
5 under Letter ID No. L2092002608. [Administrative File (accompanying Hearing Request filed  
6 November 8, 2017)]

7 7. The denial under Letter ID No. L2092002608 explained that the refund of  
8 \$867,177.00 for the period ending December 31, 2015 “has been reviewed and denied.” It went  
9 on to explain that “[a] Request for Additional Information notice was mailed to you on June 12,  
10 2017” and that the requested information was not received by the deadline of July 17, 2017.  
11 [Administrative File (accompanying Hearing Request filed November 8, 2017)]

12 Procedural History  
13 *(Pre Golden Services)*

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

18 8. On February 21, 2017, Taxpayer’s Formal Protest of the Department’s denial  
19 under Letter ID No. L2061707568 was stamped received in the Department’s Protest Office.  
20 [Administrative File (accompanying Hearing Request filed April 18, 2017)]

21 9. On March 8, 2017, the Department acknowledged Taxpayer’s protest of Letter ID  
22 No. L2061707568 under Letter ID No. L1667127600. [Administrative File (accompanying  
23 Hearing Request filed April 18, 2017)]

24 10. On April 18, 2017, the Department filed a Hearing Request in the matter of

1 Taxpayer's protest of Letter ID No. L2061707568. [Administrative File]

2 11. On June 2, 2017, the parties filed a Joint Motion to Hold Matter in Abeyance  
3 pending resolution of other similar protests then pending in the Administrative Hearings Office,  
4 including *Golden Services* and Alta Vista Regional Hospital (D&O 23-1 issued January 13,  
5 2022), The joint motion was in reference to the protest issued under Letter ID No. L2061707568.  
6 [Administrative File]

7 12. On July 26, 2017, the parties filed a Waiver of 90 Day Requirement for Hearing  
8 in reference to the protest of Letter ID No. L2061707568. [Administrative File]

9 13. On July 28, 2017, the Chief Hearing Officer of the Administrative Hearings  
10 Office approved the request to hold the matter subject of L2061707568 in abeyance.  
11 [Administrative File]

12 14. On October 4, 2017, Taxpayer's Formal Protest of the Department's denial under  
13 Letter ID No. L2092002608 was stamped received in the Department's Protest Office.  
14 [Administrative File (accompanying Hearing Request filed November 8, 2017)]

15 15. On November 8, 2017, the Department filed a Hearing Request in the matter of  
16 Taxpayer's protest of Letter ID No. L2092002608. [Administrative File]

17 16. An initial scheduling hearing occurred on December 15, 2017. Taxpayer  
18 requested that its protests be consolidated. The parties did not object that the hearing with respect  
19 to L2092002608 satisfied the 90-day hearing requirement. The Hearing Officer further observed  
20 that the parties waived the 90-day hearing requirement by mutual stipulation in L2061707568.  
21 [Administrative File]

22 17. On December 20, 2017, the Administrative Hearings Office entered an Order  
23 Lifting Abeyance, Consolidating Taxpayer Protests, Scheduling Order and Notice of

1 Administrative Hearing. The abeyance subject of the order was implemented while the  
2 Administrative Hearings Office considered motions that were then pending in other similar  
3 protests. Because those motions were resolved, the abeyance was lifted. A hearing on the merits  
4 was scheduled for August 2018. [Administrative File]

5 18. On June 12, 2018, the Administrative Hearings Office approved the parties Joint  
6 Stipulated Order providing that the protest “be held in abeyance pending resolution of the scope  
7 and applicability of the § 7-9-93 deduction in the Court of Appeals[.]”<sup>4</sup> [Administrative File]

8 19. The Hearing Officer takes administrative notice that the appeal subject of the  
9 Department’s request was *Golden Services* and a second, unnamed<sup>5</sup> nursing home facility.

10 *Post Golden Services*

11 20. On April 20, 2020, the New Mexico Court of Appeals entered its decision in the  
12 appeal for which the protest was stayed. *See Golden Services Home Health & Hospice v.*  
13 *Taxation & Revenue Dep't*, A-1-CA-36987, 2020 WL 2045956 (Apr. 20, 2020) (non-  
14 precedential)

15 21. After nearly one year from entry of *Golden Services*, on April 15, 2021, the  
16 Administrative Hearings Office entered a Proposed Summary Disposition which proposed to  
17 dispose of the protests with an order consistent with the holding expounded by *Golden Services*.  
18 [Administrative File]

19 22. On April 22, 2022, the Chief Hearing Officer of the Administrative Hearings  
20 Office entered an Order of Administrative Closure of Tax Protest for Inactivity and Lack of

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<sup>4</sup> 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.

<sup>5</sup> 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.

1 Response to Proposed Summary Disposition. [Administrative File]

2 23. On May 18, 2022, Taxpayer filed Taxpayer’s Response to the Hearing Officer’s  
3 Order of Administrative Closure. [Administrative File]

4 24. On June 9, 2022, the Administrative Hearings Office entered an Order Setting  
5 Aside Order of Administrative Closure and Briefing Schedule for Dispositive Motions and  
6 Response.<sup>6</sup> [Administrative File]

7 25. On June 14, 2022, the Department filed Department’s Motion to Vacate Order  
8 Setting Aside Administrative Closure and Briefing Schedule for Dispositive Motions and  
9 Responses as well as a separate Unopposed Motion to Exceed Page Limit. [Administrative File]

10 26. On June 27, 2022, the Administrative Hearings Office informally notified the  
11 parties by email that it would consider reasonable alternatives to the order entered on June 14,  
12 2022 and encouraged the parties to confer and respond by motion on or before July 1, 2022.  
13 [Administrative File]

14 27. On July 6, 2022, the parties filed a Joint Motion to Extend Briefing Schedule in  
15 Alta Vista Regional Hospital (the lead case) which proposed that this protest be categorized as a  
16 “hospital” case and proceed to summary judgment with other hospital cases in which Alta Vista  
17 would be the lead case for purposes of legal briefing. [Administrative File]

18 28. On July 15, 2022, the Administrative Hearings Office entered an Amended Order  
19 Modifying Briefing Schedule for Dispositive Motions, Responses, and Replies (Hospitals).  
20 [Administrative File]

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<sup>6</sup> 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 29. On July 15, 2022, the Department filed Department’s Motion for Summary  
2 Judgment and Brief in Support. [Administrative File]

3 30. On July 25, the Department filed Department’s Objection to Amended Order  
4 Modifying Briefing Schedule for Dispositive Motions, Responses, and Replies. [Administrative  
5 File]

6 31. On July 29, 2022, Taxpayer filed Carlsbad Medical Center’s Response to  
7 Taxation and Revenue Department’s Motion for Summary Judgment. [Administrative File]

8 32. On August 3, 2022, the Administrative Hearings Office entered Order on  
9 Department’s Objection to Amended Order Modifying Briefing Schedule for Dispositive  
10 Motions, Responses, and Replies. [Administrative File]

11 33. On August 29, 2022, Taxpayer filed Alta Vista Regional Hospital’s Motion for  
12 Partial Summary Judgment which provided Taxpayer’s legal argument in this protest.  
13 [Administrative File]

14 34. On September 6, 2022, the Department filed Department’s Objection and  
15 Response to Motion for Summary Judgment to Non-Lead Hospitals. [Administrative File]

16 **DISCUSSION**

17 The facts and legal issues presented concentrate on whether Taxpayer, a hospital, is eligible  
18 to deduct any portion of its gross receipts pursuant to NMSA 1978, Sections 7-9-77.1 or 7-9-93.  
19 Although the parties continue to dispute the sufficiency of documents provided to substantiate the  
20 refund claimed, a ruling in favor of the Department on the legal entitlement to deductions under  
21 Section 7-9-77.1 and Section 7-9-93 renders that specific factual dispute moot.

22 In controversies involving a question of law, or application of law where there are no  
23 disputed facts, summary judgment is appropriate. *See Koenig v. Perez*, 1986-NMSC-066, ¶10-



1 11, 104 N.M. 664. If the movant for summary judgment makes a prima facie showing that it is  
2 entitled to a judgment as a matter of law, the burden shifts to the opposing party to show  
3 evidentiary facts that would require a trial on the merits. *See Roth v. Thompson*, 1992-NMSC-  
4 011, ¶17, 113 N.M. 331.

5 The parties agreed that there were no disputes as to the material fact that the Taxpayer is  
6 a hospital. The parties also agreed that the outcome of the summary judgment motion in favor of  
7 the Department would be dispositive to the issues of the hearing and that a final decision and  
8 order denying the protest should be issued and that an outcome in favor of the Taxpayer would  
9 result in the protest being placed on the docket for a hearing on the merits<sup>7</sup>.

10 The issues presented in this case are appropriate for summary judgment. The primary  
11 question is whether Taxpayer is legally entitled to claim deductions under NMSA 1978, Sections  
12 7-9-77.1 and 7-9-93.

### 13 Burden of Proof

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

18 The Gross Receipts and Compensating Tax Act, for the privilege of engaging in business,  
19 imposes excise taxes of specified percentages on gross receipts on any person engaging in  
20 business in New Mexico. “To prevent evasion of the gross receipts tax and to aid in its  
21 administration, it is presumed that all receipts of a person engaging in business are subject to the

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<sup>7</sup> If the Taxpayer is legally entitled to take the deductions, the Taxpayer must still provide evidence to establish the facts supporting the amount of the refund. *See TPL, Inc.*, 2003-NMSC-007, ¶ 9. *See also* NMSA 1978, § 7-1-26 (2019).

1 gross receipts tax. *See* NMSA 1978, Section 7-9-4 (2010, Amended 2022). For the purpose of  
2 enforcing the tax, there is a presumption that all receipts of a person engaging in business in New  
3 Mexico are subject to gross receipts tax. *See* Section 7-9-5(A) (2019).

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

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

18 Even if a taxpayer can establish a legal entitlement to a deduction, a taxpayer seeking a  
19 refund must support the amount of the refund claimed with credible documentation. *See* NMSA  
20 1978, Section 7-1-26 (A) (5) and (C) (2019). Accordingly, it is not enough that a taxpayer  
21 establishes a legal right to a refund, but it must also come forward with evidence to establish the  
22 facts supporting the amount of the refund. *See TPL, Inc.*, 2003-NMSC-007, ¶ 9.

23 In this case, while Taxpayer claims it is eligible for a deduction under either Section 7-9-

1 77.1 or Section 7-9-93, the Department argues, that because a hospital's deductions are limited to  
2 Section 7-9-73.1, neither Section 7-9-77.1 nor Section 7-9-93 are applicable. Under the facts  
3 presented in this protest, the Department is correct.

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

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

#### 16 Application of Section 7-9-93 to Hospitals

17 As counsel are aware, application of Section 7-9-93 to entities, such as hospitals, has  
18 been considered several times by this tribunal. Although this tribunal has previously ruled<sup>8</sup> that  
19 hospitals could qualify for the deduction provided by Section 7-9-93, the Court of Appeals in  
20 *Golden Services*, an unpublished decision, concluded that Section 7-9-93 does not permit entities  
21 such as hospitals to claim a deduction from gross receipts. Instead, the deduction is limited to  
22 receipts received for the services of individual health care practitioners.

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<sup>8</sup> 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 Section 7-9-93 (A) (2007) provides:

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

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

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

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

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

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

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

25 -finalizes once and for all that the Legislature does not intend to  
26 bestow a tax deduction to simply “any taxpayer” and thus non-  
27 practitioner transactions do not fall within the purview of Section  
28 7-9-93 (2016).

29 *See Golden Services*, ¶ 26.

30 In the special concurrence, Judge Ives further observed:

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

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

5 As part of its evaluation, *Golden Services* also observed that the two regulations directly  
6 addressing the applicability of the deduction under Section 7-9-93 were presumptively proper  
7 interpretations of the statute. *See Golden Services*, ¶ 21; *See also* Regulations 3.2.241.13 and  
8 3.2.241.17 NMAC (2006).

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

21 One regulation prohibits “[a]n organization, whether or not owned exclusively by health  
22 care practitioners, licensed as a hospital, hospice, nursing home, ... an outpatient facility or  
23 intermediate care facility” from taking the deduction. *See* Regulation 3.2.241.17 NMAC (2006).  
24 The regulation indicates that such a facility “is not a ‘health care practitioner’ as defined by  
25 Section 7-9-93”. *Id.* The other regulation actually allows for “[a] corporation, unincorporated

1 business association, or other legal entity” to take the deduction for payments on services  
2 performed “on its behalf by health care practitioners who own or are employed by the  
3 corporation, unincorporated business association or other legal entity.” *See* Regulation  
4 3.2.241.13 NMAC (2006). However, the regulation creates an exception to that allowance when  
5 that entity is a 501 (C) (3) organization or “an HMO, hospital, hospice, nursing home, an ...  
6 outpatient facility or intermediate care facility”. *Id.* These excepted entities may not take the  
7 deduction. *See id.*

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

12 Nonetheless, Taxpayer asserts that *Golden Services* should not be afforded persuasive  
13 value because it is an unpublished decision and because it was “wrongly decided.” Taxpayer  
14 encourages the tribunal to decide the protest consistent with its prior decisions contrary to the  
15 holding of *Golden Services*. In effect, Taxpayer asks the tribunal to disregard the ruling of the  
16 Court of Appeals simply because it was an unpublished opinion and because Taxpayer prefers its  
17 previous decisions premised on a statutory construction of the deduction now rejected by the  
18 Court of Appeals in *Golden Services*. This argument is inconsistent with the limited quasi-  
19 judicial statutory role of the Administrative Hearings Office and the broader principle of an  
20 ordered, adjudicative process, where a lower administrative tribunal must show deference and  
21 respect to the legal rulings of a court of superior jurisdiction. *See Bd. of Cnty. Commissioners,*  
22 *Harding Cnty. v. New Mexico Taxation & Revenue Dep't*, 2021-NMSC-007 fn2, 480 P.3d 870,  
23 878 (albeit within the context of a convoluted and confusing procedural posture, the Supreme

1 Court made clear the broader principle that AHO does not have authority to overrule a prior  
2 judicial construction of a statute).

3 This position also contradicts prior representations of the parties that this protest would  
4 be informed by the decision in *Golden Services*, which Taxpayer now argues should be  
5 disregarded because it is an unpublished decision which has no precedential value. The Hearing  
6 Officer is not persuaded.

7 Taxpayer is correct that an unpublished decision is not controlling precedent. *See* Rule 12-  
8 405 NMRA (2012). *See also Hess Corp. v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-043,  
9 ¶ 35, 149 N.M. 527 (indicating that unpublished opinions and orders are written solely for the  
10 benefit of the parties and have no controlling precedential value). *See also Inc. County of Los*  
11 *Alamos v. Montoya*, 1989-NMCA-004, ¶ 6, 108 N.M. 361 (noting that unpublished caselaw is  
12 not binding precedent). *See State v. Granillo-Macias*, 2008-NMCA-021, ¶ 11, 143 N.M. 455  
13 (noting that unpublished orders, decisions, and opinions are not controlling and are written solely  
14 for the benefit of the parties). *See State v. Gonzales*, 1990-NMCA-040, ¶ 47-48, 110 N.M. 218  
15 (noting that unpublished orders, decisions, and opinions are not meant to be controlling authority  
16 and that they rarely describe the context of the issue at length, which may be of controlling  
17 importance to the decision).

18 However, unpublished decisions may nevertheless be cited for their persuasive  
19 significance. *See* Rule 12-405 NMRA (stating that unpublished decisions are not precedent but  
20 may still be persuasive). *See also State v. Stevenson*, 2020-NMCA-005, ¶ 25 (considering an  
21 unpublished decision for its persuasive value), *cert. denied*, No. S-1-SC-38015 (December 26,  
22 2019).

23 *Golden Services* dealt primarily with the legal applicability of Section 7-9-93, the same

1 deduction at issue here (and in roughly 60 other protests that were stayed pending its issuance,  
2 the majority of which remain pending). Thus, *Golden Services* is highly persuasive as to the legal  
3 applicability of the deduction and should be applied to the facts of this case.

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

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

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

19 The Department presented several other arguments to support and solidify its position<sup>9</sup>  
20 regarding the application and limitations of Section 7-9-93, but the Hearing Officer need not  
21 address those since *Golden Services* resolves the question of statutory construction over which  
22 the parties quarrel without need for further discussion.

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

25 Application of Section 7-9-77.1 to Hospitals

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

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

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

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

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

28 The 2016 version defined “health care practitioner” in Section 7-9-77.1 I (3) to include  
29 specified fields of relevant practice similar to that observed in Section 7-9-93, including licensed  
30 athletic trainers (3) (a), audiologists (3) (b), dentists (3) (f), and other individual areas of practice,  
31 just to name a few. Similar to Section 7-9-93, “hospital” is not included in the list of eligible  
32 taxpayers.

33 The Legislature also explicitly made the deduction available to clinical laboratories

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

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

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

19 Consequently, the absence of an explicit reference to “hospitals” in the statute  
20 demonstrates the Legislature’s intention to exclude hospitals from eligibility and therefore, from  
21 the grace conferred on those individuals and entities specifically referenced in Section 7-9-77.1.

22 This conclusion is reinforced by the Department’s in-depth discussion of the statute’s  
23 legislative history and the policies which the Legislature sought to promote, going all the way

1 back to its inception in 1998 through the act’s most recent iteration. The Department’s extraction  
2 and discussion of legislative history is persuasive and in harmony with the plain language of the  
3 statute.

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

10 For these reasons, hospitals are not entitled to deduct gross receipts under Section 7-9-  
11 77.1.

#### 12 Relevance or Application of Other Potential Deductions

13 Taxpayer’s claims for refund initially relied on several other deductions, in addition to  
14 those already evaluated. However, it also appears that those claims were either resolved or  
15 waived prior to entry of this Decision and Order.

16 For example, the Statement of Grounds for Taxpayer’s protest in Letter ID L2092002608  
17 indicated that the protest was premised on several statutes: NMSA 1978, Section 7-9-77.1,  
18 Section 7-9-93, Section 7-9-73.2, Section 7-9-67, Section 7-9-54, Section 7-9-96.1, Section 7-1-  
19 68, Section 7-9-96.1. See Administrative File (Statement of Grounds for protest of Letter ID  
20 L2092002608 - Section IV, Paras. 1 – 8 (Sep. 25, 2017))] However, the Department’s statement  
21 of material fact which summarized the issue in protest suggested that only Section 7-9-93  
22 remained in dispute. Taxpayer did not contest that fact. See FoF No. 2.c.

23 In contrast, the Statement of Grounds for Taxpayer’s protest of Letter ID L2061707568

1 suggests Taxpayer was not intending to protest the application of: NMSA 1978, Section 7-9-  
2 77.1, Section 7-9-73.2, Section 7-9-67, and Section 7-9-54. However, the Department's  
3 statement of facts suggested that application of these statutes may still be in dispute. *See* FoF No.  
4 3.c; Administrative File (Statement of Grounds for protest of Letter ID L2061707568 - Section  
5 IV, Paras. 6 – 9 (Feb. 15, 2017))]

6 To the extent there is any genuine dispute regarding the application of these deductions  
7 (although it appears there is none), the Hearing Officer perceives it to be trivial in comparison to  
8 the dispute regarding the application of Section 7-9-93 and Section 7-9-77.1. The parties  
9 dedicated minimal effort or resource to presenting facts and legal argument on these other  
10 deductions.

11 In any event, the Department is entitled to summary judgment on these issues to the  
12 extent they are in dispute as Taxpayer did not object to the sufficiency of the Department's  
13 evidence nor attempt to rebut the Department's prima facie case with evidence of its own. *See*  
14 *Roth v. Thompson*, 1992-NMSC-011, ¶17, 113 N.M. 331.

#### 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. Taxpayer's protest should be, and hereby  
22 is, DENIED.

1 **CONCLUSIONS OF LAW**

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

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

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

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

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

14 F. Taxpayer is not entitled to a deduction under NMSA 1978, Section 7-9-54.

15 G. Taxpayer is not entitled to a deduction under NMSA 1978, Section 7-9-67.

16 H. Taxpayer is not entitled to a deduction under NMSA 1978, Section 7-9-73.2.

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

19 For the reasons stated, Taxpayer’s protest is DENIED.

20 DATED: January 13, 2023

21 

22 Chris Romero, Hearing Officer  
23 Administrative Hearings Office  
24 P.O. Box 6400  
25 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

**CERTIFICATE OF SERVICE**

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

*INTENTIONALLY BLANK*