

1  
2  
3  
4  
5  
6  
7

**STATE OF NEW MEXICO  
ADMINISTRATIVE HEARINGS OFFICE  
TAX ADMINISTRATION ACT**

8  
9

**IN THE MATTER OF THE PROTEST OF  
MIMBRES MEMORIAL HOSPITAL/NURSING HOME  
TO THE DENIALS OF REFUND  
ISSUED UNDER LETTER ID NOS. L1257728304 and L1546307888**

10  
11

**v. AHO No. n/a, D&O No. 23-03**

12  
13

**NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

14  
15

**DECISION AND ORDER  
GRANTING SUMMARY JUDGMENT FOR THE DEPARTMENT**

16  
17  
18  
19  
20

On November 28, 2022, Hearing Officer Dee Dee Hoxie, Esq. conducted an in-person hearing on the motions for summary judgment. The Taxation and Revenue Department (Department) was represented by David Mittle, Staff Attorney. Mimbres Memorial Hospital/Nursing Home (Taxpayer) was represented by its attorney, Wade Jackson. Hearing Officer Chris Romero was also present. On the record of this hearing, the parties adopted the arguments that had been made on the record of the lead protest’s hearing. The Department requested a separate record for this protest solely to object to the factual basis<sup>1</sup> of the lead protest because they are not identical to the factual basis of this protest. The Hearing Officer took notice of all documents in the administrative file.

21  
22  
23  
24

The facts and legal issues related to the summary judgment motions focus on whether the Taxpayer, a hospital, is eligible to deduct any portion of its gross receipts pursuant to Section 7-9-77.1 or Section 7-9-93. *See* NMSA 1978, § 7-9-77.1 (2007) and (2016)<sup>2</sup> and § 7-9-93 (2007)<sup>3</sup>. The Hearing Officer considered all of the evidence and arguments presented by both parties.

---

<sup>1</sup> In reference to the facts that could establish the amount of the refund.

<sup>2</sup> The statutes in effect during the tax periods at protest. The statute was also amended in 2014, 2021, and in 2022.

<sup>3</sup> The statute in effect during the tax periods at protest. The statute was amended in 2016 and in 2021.

1 Because the Taxpayer is a hospital and not a healthcare practitioner, the Hearing Officer finds in  
2 favor of the Department. *See 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 (NMCA, April 20, 2020) (non-precedential), *cert.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-SC-38341  
5 (NMSC, November 17, 2020). Consequently, the Department's motion for summary judgment  
6 is HEREBY GRANTED, the Taxpayer's motion for partial summary judgment is HEREBY  
7 DENIED. IT IS DECIDED AND ORDERED AS FOLLOWS:

### 8 FINDINGS OF FACT

9 1. On February 3, 2017, the Department issued a denial of refund to the Taxpayer on  
10 the Taxpayer's refund claim of \$328,516.00 for the tax period ending on December 31, 2014<sup>4</sup>.  
11 [Admin. file L1257728304].

12 2. On February 21, 2017, the Taxpayer filed a timely written protest to the denial of  
13 refund. [Admin. file protest].

14 3. On February 14, 2017, the Department issued a denial of refund to the Taxpayer  
15 on the Taxpayer's refund claim of \$288,582.00 for the tax period ending December 31, 2015.  
16 [Admin. file L154630788].

17 4. On March 1, 2017, the Taxpayer filed a timely written protest to the denial of  
18 refund. [Admin. file protest].

19 5. On March 9, 2017, the Department acknowledged its receipt of the protests.  
20 [Admin. file L0100952368 and L1712642352].

21 6. On April 19, 2017, the Department filed a consolidated request for hearing with  
22 the Administrative Hearings Office. [Admin. file request].

---

<sup>4</sup> According to information in the administrative file, this period includes the time frame from January 1, 2013 to December 31, 2014. [Admin. file protest and Department's Motion].

1           7.       On June 9, 2017, the parties filed a joint motion to hold the matter in abeyance  
2 pending decisions in other protests with a substantially similar deduction issue. [Admin. file].

3           8.       On July 26, 2017, the parties filed a joint waiver of the 90-day requirement for a  
4 hearing. [Admin. file].

5           9.       On July 28, 2017, the request to hold the matter in abeyance was granted.  
6 [Admin. file].

7           10.      One of the protests referenced<sup>5</sup> by the parties in their motion to hold the matter in  
8 abeyance was appealed, and the appeal decision was issued on April 20, 2020. *See Golden*  
9 *Services*, No. A-1-CA-36987.

10          11.      The parties did not file any pleadings with the Administrative Hearings Office on  
11 this protest for approximately one year after the appeal decision. [Admin. file].

12          12.      On April 15, 2021, the Administrative Hearings Office issued a proposed  
13 summary disposition of the protest. The parties were given 15 days to file an objection. [Admin.  
14 file].

15          13.      No objection was filed within the deadline. [Admin. file].

16          14.      On April 18, 2022, more than a year later, the Administrative Hearings Office  
17 issued an order of administrative closure for inactivity and lack of objection to the proposed  
18 summary disposition. The parties were given 30 days to file an objection. [Admin. file].

19          15.      On May 18, 2022, the Taxpayer filed an objection to the order of administrative  
20 closure. [Admin. file].

---

<sup>5</sup> This is the unnamed nursing home referred to in the *Golden Services* decision. The party was unnamed because the appeal on that case was interlocutory in nature without a final public decision; therefore, the identity of the party was not subject to public disclosure. *See* NMSA 1978, § 7-8-1.3.

1           16.     On June 9, 2022, the Administrative Hearings Office issued an order setting aside  
2 the closure and returning this protest to the docket with a briefing schedule for filing summary  
3 judgment motions. [Admin. file].

4           17.     On June 14, 2022, the Department filed a motion to vacate the briefing schedule  
5 and an unopposed motion to exceed the page limits. [Admin. file].

6           18.     On July 6, 2022, in a separate protest, the parties filed a joint motion to extend the  
7 briefing schedule and proposed to file one motion regarding the deduction issue in this protest,  
8 designating the other protest as the lead protest (“lead protest”) for this issue regarding taxpayers  
9 who are categorized as hospitals. [Admin. file].

10          19.     On July 15, 2022, the Administrative Hearings Office issued an amended order  
11 modifying the briefing schedule and accepting the parties’ proposal to allow the parties to file  
12 one motion on a hospital lead protest that would also be applicable to this protest. [Admin. file].

13          20.     On July 15, 2022, the Department filed its motion for summary judgment  
14 (“Department’s Motion”). The Department filed a motion in this protest as well as in the lead  
15 protest. [Admin. file].

16          21.     On July 25, 2022, the Department filed an objection to the modified briefing  
17 schedule. [Admin. file].

18          22.     On July 29, 2022, the Taxpayer filed its response to the Department’s summary  
19 judgment motion adopting the response that was filed in the lead protest<sup>6</sup> (“Taxpayer’s  
20 Response”). [Admin. file].

---

<sup>6</sup> The Taxpayer’s Response was actually filed in another protest, rather than the protest that had been designated as the lead protest. Nevertheless, given the similarities between all of these protests and the unity of representation for the various taxpayers and the single representative for the Department, the Hearing Officer is confident that both parties are aware of the arguments made in the Taxpayer’s Response.

1           23.     On August 1, 2022, the Department filed a request for oral argument on the  
2 motion for summary judgment. [Admin. file].

3           24.     On August 3, 2022, the Administrative Hearings Office issued an order  
4 acknowledging the Department’s objection to the modified briefing schedule<sup>7</sup>. [Admin. file].

5           25.     On August 29, 2022, the motion for partial summary judgment was filed in the  
6 lead protest (“Taxpayer’s Motion”). [Admin. file].

7           26.     On September 6, 2022, the Department filed its objection and response to the lead  
8 protest’s motion. [Admin. file].

9           27.     On September 27, 2022, the Administrative Hearings Office issued a notice for a  
10 joint telephonic pre-hearing conference in this protest as well as other related hospital protests.  
11 [Admin. file].

12           28.     On October 12, 2022, a joint telephonic hearing was conducted. [Admin. file].

13           29.     On October 19, 2022, a notice for hearing on the motions for summary judgment  
14 was issued. [Admin. file].

15           30.     On November 28, 2022, the hearing on the motions was conducted<sup>8</sup>. [Admin.  
16 file].

17           31.     On the record at the hearing on November 28, 2022, the parties agreed upon the  
18 material fact that the Taxpayer is a hospital. [Admin. file].

---

<sup>7</sup> 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 Hearing Officer 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.

<sup>8</sup> Although not designated as a joint hearing, both Hearing Officers were present for the substantive argument made in the hearing on the lead protest and for the adoption of that argument in this protest.

1 **DISCUSSION**

2 **Burden of proof.**

3 The relevant issue of the motions for summary judgment is whether the Taxpayer, a  
4 hospital, is eligible to deduct any portion of its gross receipts tax pursuant to Section 7-9-77.1 or  
5 Section 7-9-93. The burden is on the Taxpayer to prove that it is entitled to an exemption or  
6 deduction. See *Public Services Co. v. N.M. Taxation and Revenue Dep't.*, 2007-NMCA-050, ¶  
7 32, 141 N.M. 520. See also *Till v. Jones*, 1972-NMCA-046, 83 N.M. 743. See also *TPL, Inc. v.*  
8 *N.M. Taxation & Revenue Dep't.*, 2003-NMSC-007, 133 N.M. 447. “Where an exemption or  
9 deduction from tax is claimed, the statute must be construed strictly in favor of the taxing  
10 authority, the right to the exemption or deduction must be clearly and unambiguously expressed  
11 in the statute, and the right must be clearly established by the taxpayer.” See *Escrow Corp. v.*  
12 *State Taxation and Revenue Dep't.*, 1988-NMCA-068, ¶ 8, 107 N.M. 540. See also *Wing Pawn*  
13 *Shop v. Taxation and Revenue Dep't.*, 1991-NMCA-024, ¶ 16, 111 N.M. 735. See also *Chavez*  
14 *v. Commissioner of Revenue*, 1970-NMCA-116, ¶ 7, 82 N.M. 97. See also *Pittsburgh and*  
15 *Midway Coal Mining Co. v. Revenue Division*, 1983-NMCA-019, 99 N.M. 545.

16 Motions for summary judgment are appropriate when there is no genuine issue of  
17 material fact, and the judgment is a matter of law. See *Elane Photography, LLC v. Willock*,  
18 2013-NMSC-040, ¶ 12. See also *Roth v. Thompson*, 1992-NMSC-011, 113 N.M. 331. See also  
19 *Ute Park Summer Homes Ass'n v. Maxwell Land Grant Co.*, 1967-NMSC-086, 77 N.M. 730.  
20 See also *Martinez v. Logsdon*, 1986-NMSC-056, 104 N.M. 479. The parties agreed that there  
21 were no disputes as to the material fact that the Taxpayer is a hospital. The parties also agreed  
22 that the outcome of the summary judgment motion in favor of the Department would be  
23 dispositive to the issues of the hearing and that a final decision and order denying the protest

1 should be issued and that an outcome in favor of the Taxpayer would result in the protest being  
2 placed on the docket for a hearing on the merits<sup>9</sup>.

3 **Gross receipts tax.**

4 Anyone engaging in business in New Mexico is subject to the gross receipts tax. *See*  
5 NMSA 1978, § 7-9-4 (2020)<sup>10</sup>. To engage in business in New Mexico means “carrying on or  
6 causing to be carried on any activity with the purpose of direct or indirect benefit.” NMSA 1978, §  
7 7-9-3.3 (2019). Gross receipts include the total amount received “from performing services in New  
8 Mexico.” NMSA 1978, § 7-9-3.5 (A) (1) (2019). There is a statutory presumption that “all receipts  
9 of a person engaging in business are subject to the gross receipts tax.” NMSA 1978, § 7-9-5 (A)  
10 (2019). The parties stipulated that the Taxpayer was providing services as a hospital in New  
11 Mexico. [Admin. file]. Presumptively, the Taxpayer’s receipts for providing those services are  
12 subject to the gross receipts tax. *See* NMSA 1978, § 7-9-4 and §7-9-5. Taxpayers may reduce their  
13 gross receipts tax liability through the application of deductions and exemptions; however, the right  
14 to a deduction must be clear and unambiguous with a strict construction against the taxpayer. *See*  
15 *Sec. Escrow Corp.*, 1988-NMCA-068, ¶ 8. *See also TPL, Inc.*, 2003-NMSC-007, ¶ 9.

16 **Deductions under Section 7-9-93.**

17 The denials of refund in this protest relate to tax periods in 2013, 2014, and 2015.  
18 [Admin. file]. Therefore, the version of the statute applicable to the protest was the one in effect  
19 from 2013 to 2015. *See* NMSA 1978, § 7-9-93 (2007). During that time, the statute provided  
20 that

---

<sup>9</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).

<sup>10</sup> 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 related to the Taxpayer’s claims for refund.

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

9           Previous decisions of this tribunal found that hospitals were eligible to take this deduction under  
10          the 2007 version of the statute, beginning with *In the Matter of the Protest of HealthSouth*  
11          *Rehabilitation*, Decision and Order No. 16-16. However, the Court of Appeals rejected that  
12          statutory interpretation in *Golden Services*. See *Golden Services*, No. A-1-CA-36987.

13                 *Golden Services* found Section 7-9-93 to be ambiguous and engaged in an evaluation of  
14          “other indicia of legislative intent such as the statute’s purpose and legislative history.” *Golden*  
15          *Services*, No. A-1-CA-36987, ¶ 15. In this evaluation, the Court of Appeals considered whether  
16          the deduction was available to health care facilities or if it was only available to health care  
17          practitioners. See *id.* at ¶ 12. Ultimately, the Court of Appeals concluded that health care  
18          facilities are not entitled to claim the deduction based on the legislative history of the statute.  
19          See *id.* at ¶24-26. Moreover, the concurrence noted that the statute “does not clearly allow  
20          institutions to take the deduction.” *Id.* at ¶ 37 (special concurrence). The decision also  
21          addressed the 2016 amendment of the statute and found that it clarified that the deduction was  
22          not available to any taxpayer, only to health care practitioners. See *id.* at ¶ 26.

23                 Despite the parties’ prior representation that this protest would be informed by the  
24          decision in one of the protests at issue in *Golden Services*, the Taxpayer now argues that *Golden*  
25          *Services* should not inform the legal issues of this protest because it is an unpublished decision  
26          which has no precedential value. [Taxpayer’s Response and Taxpayer’s Motion].



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

12           Although not controlling precedent, unpublished decisions may be cited for their  
13 persuasive significance. *See* Rule 12-405 NMRA (stating that unpublished decisions are not  
14 precedent but may still be persuasive). *See also State v. Stevenson*, 2020-NMCA-005, ¶ 25  
15 (considering an unpublished decision for its persuasive value), *cert. denied*, No. S-1-SC-38015  
16 (December 26, 2019).

17           The Taxpayer argues that *Golden Services* is not persuasive because it was wrongly  
18 decided. [Taxpayer's Response and Taxpayer's Motion]. In essence, the Taxpayer invites the  
19 Hearing Officer to disregard the ruling of a superior tribunal because the Court of Appeals did  
20 not rule in the Taxpayer's favor. The Hearing Officer declines to do so. This argument is  
21 inconsistent with the limited quasi-judicial statutory role of the Administrative Hearings Office  
22 and the broader principle of an ordered, adjudicative process, where a lower administrative  
23 tribunal must show deference and respect to the legal rulings of a court of superior jurisdiction.

1 See *Bd. of Cnty. Commissioners, Harding Cnty. v. New Mexico Taxation & Revenue Dep't*, 2021-  
2 NMSC-007 fn2, 480 P.3d 870, 878 (noting the broad principle that hearing officers do not have  
3 authority to overrule a prior judicial construction of a statute). The Court of Appeals also  
4 recently rejected the argument that *Golden Services* was wrongly decided. See *Four Corners*  
5 *Healthcare v. N.M. Taxation and Revenue Dep't*, No. A-1-CA-38869, mem. op. (NMCA,  
6 December 14, 2022) (non-precedential), ¶ 8. As *Golden Services* was a directly relevant and  
7 extensive review of the provisions of Section 7-9-93 and the parties' requested that this protest  
8 be held in abeyance in anticipation of its value regarding the issues of this protest and the Court  
9 of Appeals has already rejected the argument that *Golden Services* was wrongly decided, the  
10 decision in *Golden Services* is highly persuasive on the proper statutory construction of Section  
11 7-9-93. See *Golden Services*, No. A-1-CA-36987.

12 The Taxpayer argues that the plain language of the statute is not ambiguous and provides  
13 for a deduction for any taxpayer on receipts from payments from a managed care provider or  
14 health care insurer for commercial contract services provided by a healthcare practitioner within  
15 the scope of their practice. [Taxpayer's Response and Taxpayer's Motion]. The Taxpayer's  
16 argument essentially restates the statutory interpretation of the previous decisions of this tribunal,  
17 which has been rejected by the Court of Appeals. See *Golden Services*, No. A-1-CA-36987.

18 The first step in statutory interpretation is to look at the plain language of the statute and  
19 to refrain from further interpretation if the plain language is not ambiguous. See *Marbob Energy*  
20 *Corp. v. N.M. Oil Conservation Comm'n.*, 2009-NMSC-013, 146 N.M. 24. Statutes are to be  
21 applied as written unless a literal use of the words would lead to an absurd result. See *New*  
22 *Mexico Real Estate Comm'n. v. Barger*, 2012-NMCA-081, ¶ 7. All statutes, whether ambiguous  
23 or not, should be construed in accordance with the legislative intent or spirit and reason for the

1 statute, even though it may require a substitution or addition of words. *See id.* *See also State ex*  
2 *rel. Helman v. Gallegos*, 1994-NMSC-023, 117 N.M. 346. *See also Kewanee Indus., Inc. v.*  
3 *Reese*, 1993-NMSC-006, 114 N.M. 784. When a statute is ambiguous or would lead to an  
4 absurd result, it should be construed according to its obvious purpose. *See T-N-T Taxi Co. v.*  
5 *N.M. Pub. Regulation Comm’n*, 2006-NMSC-016, ¶ 5, 139 N.M. 550.

6 As discussed above, *Golden Services* found that the statute was ambiguous and ultimately  
7 found that the Taxpayer’s argument on how to construe the statute was not consistent with the  
8 legislative history and purpose of the deduction. *See Golden Services*, No. A-1-CA-36987 at ¶  
9 15-26. Moreover, part of the legal analysis of the decision found that the two regulations that  
10 directly address the applicability of the deduction under Section 7-9-93 were presumptively  
11 proper interpretations of the statute. *See id.* at ¶ 21. *See also* 3.2.241.13 and 3.2.241.17 NMAC  
12 (2006). The Taxpayer’s argument does not address the issue of the regulations. [Taxpayer’s  
13 Response and Taxpayer’s Motion].

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

1 *Johnson v. NM Oil Conservation Com'n*, 1999-NMSC-021, 127 NM 120 (holding that canons of  
2 construction that apply to statutes also apply to rules and regulations).

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

14 It was a stipulated material fact that the Taxpayer is a hospital. [Admin. file]. Under the  
15 regulations, a hospital is not a health care practitioner and is not allowed to take the deduction  
16 under Section 7-9-93. *See* 3.2.241.13 and 3.2.241.17 NMAC. *See also Golden Services*, No. A-  
17 1-CA-36987. Therefore, the Taxpayer is not entitled to take the deduction under Section 7-9-93.

18 **Deductions under Section 7-9-77.1.**

19 In the statements of grounds attached to the protests<sup>11</sup>, the Taxpayer indicated that it was  
20 “not requesting any additional refunds in this Protest for receipts deductible under NMSA 1978,  
21 § 7-9-77.1.” [Admin. file protests statements of grounds]. Generally, the decision does not

---

<sup>11</sup> The Taxpayer’s Response makes arguments on several statutory provisions, including Section 7-9-77.1, that the protest in this matter explicitly said were not at issue. [Taxpayer’s Response and Admin. file protests statements of grounds].

1 encompass issues that are not included in the protest. *See* NMSA 1978, § 7-1B-8. However,  
2 since the protest became active again in 2022, the Taxpayer has indicated that Section 7-9-77.1  
3 may be in contention<sup>12</sup>. [Admin. file]. As the Department’s Motion briefly addresses Section 7-  
4 9-77.1, it is being included in this decision. [Department’s Motion].

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

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

19 Section 7-9-77.1 (A) was amended in 2016<sup>13</sup> to provide that:

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

27 The 2016 version defined “health care practitioner” to include individuals, such as a  
28 chiropractic physician, a dentist, a doctor of oriental medicine, and an optometrist, just to name a  
29 few. *See* NMSA 1978, § 7-9-77.1 (I) (3) (2016). The 2016 version of Section 7-9-93 also

---

<sup>12</sup> Other statutory sections mentioned in the Taxpayer’s Response are deemed not to be at issue in this protest based on the statements of grounds filed with the protests and the parties’ previous representations that the matters at issue were the same as those decided in *Golden Services*. The parts of the Taxpayer’s Response that address other statutory provisions are deemed specific to the lead protest and are not relevant to this protest.

<sup>13</sup> The statute was also amended in 2014, but there was no change to the provisions of Subsection A at the time of the 2014 amendment. *See* NMSA 1978, § 7-9-77.1 (2014).

1 included a definition of “health care practitioner” that included individuals, such as a chiropractic  
2 physician, a dentist, a doctor of oriental medicine, and an optometrist, just to name a few. *See*  
3 NMSA 1978, § 7-9-93 (C) (3) (2016). In neither statute is “hospital” included in the list of  
4 health care practitioners, who are the taxpayers who may deduct items from their gross receipts.  
5 *See* NMSA 1978, § 7-9-77.1 (2016) and § 7-9-93 (2016).

6 Since the 2007 versions of both statutes began with “[r]eceipts from payments” and the  
7 2016 versions were both amended to “[r]eceipts of a health care practitioner”, it stands to reason  
8 that the same statutory interpretation should apply to both statutes. *See* NMSA 1978, § 7-9-77.1  
9 (2007) and (2016) and § 7-9-93 (2007) and (2016). *See also Golden Services*, No. A-1-CA-  
10 36987. The statutory interpretation of Section 7-9-93 concluded that the deduction was available  
11 to health care practitioners and was not available to health care institutions. *See Golden*  
12 *Services*, No. A-1-CA-36987 at ¶ 24.

13 Similar to its arguments made for the deduction under Section 7-9-93, the Taxpayer  
14 argues that hospitals may take the deduction under Section 7-9-77.1 because “nothing in its  
15 language precludes a hospital from claiming the deduction.” [Taxpayer’s Response]. As  
16 previously discussed in this decision, it is incumbent upon the Taxpayer to prove that it is  
17 entitled to an exemption or deduction. *See Public Services Co.*, 2007-NMCA-050, ¶ 32. *See*  
18 *also Till*, 1972-NMCA-046. *See also TPL, Inc.*, 2003-NMSC-007. “Where an exemption or  
19 deduction from tax is claimed, the statute *must be construed strictly in favor of the taxing*  
20 *authority*, the right to the exemption or deduction *must be clearly and unambiguously expressed*  
21 *in the statute*, and the right must be clearly established by the taxpayer.” *Sec. Escrow Corp.*,  
22 1988-NMCA-068, ¶ 8 (emphasis added). *See also Wing Pawn Shop*, 1991-NMCA-024, ¶ 16.  
23 *See also Chavez*, 1970-NMCA-116, ¶ 7. *See also Pittsburgh and Midway Coal Mining Co.*,

1 1983-NMCA-019. Moreover, it is incumbent on a taxpayer to prove “that it comes within the  
2 terms of a statute permitting a tax deduction.” *Sutin, Thayer & Browne v. Revenue Div. of the*  
3 *Taxation & Revenue Dep’t*, 1985-NMCA-047, ¶ 17, 104 N.M. 633. Language that does not  
4 preclude a hospital from taking a deduction is not the same as language that clearly and  
5 unambiguously expresses the right to take the deduction. *See id.* *See also Sec. Escrow Corp.*,  
6 1988-NMCA-068, ¶ 8. *See also Golden Services*, No. A-1-CA-36987 at ¶ 37 (special  
7 concurrence).

8 The Department argues that a hospital may take a deduction only<sup>14</sup> under Section 7-9-  
9 73.1. [Department’s Motion]. The Department argues that there is no other deduction<sup>15</sup> that  
10 explicitly allow for hospitals to take a deduction. [Department’s Motion]. “A conferral of  
11 specific authority trumps any previous conferral of general authority.” *In re Estate of McElveny*,  
12 2017-NMSC-024, ¶ 21. In general, statutes should be read in harmony with one another, but if  
13 there is a conflict the more specific statute will generally prevail. *See State v. Cleve*, 1999-  
14 NMSC-017, ¶ 17, 127 N.M. 240. The Department’s argument, the similarities between Section  
15 7-9-77.1 and Section 7-9-93, and the holding in *Golden Services* persuasively establish that the  
16 Legislature did not intend to confer eligibility for a hospital to claim a gross receipts deduction  
17 under Section 7-9-77.1 or Section 7-9-93. *See In re Estate of McElveny*, 2017-NMSC-024. *See*  
18 *also Golden Services*, No. A-1-CA-36987.

### 19 **Administrative Costs and Fees.**

20 The Taxpayer’s protest requested administrative costs and fees. *See NMSA 1978, § 7-1-*  
21 *29.1 (2015)*. Because the Taxpayer is not the prevailing party, the request is denied. *See id.*

---

<sup>14</sup> Other than for costs associated with construction, which is not an issue of this protest.

<sup>15</sup> Again, other than for costs associated with construction.

1 **CONCLUSIONS OF LAW**

2 A. The Taxpayer filed timely written protests to the denial of its claims for refund, and  
3 jurisdiction lies over the parties and the subject matter of this protest. *See* NMSA 1978, § 7-1B-8  
4 (2019).

5 B. The parties waived the requirement that a hearing be conducted within 90 days of  
6 the protest. *See* NMSA 1978, Section 7-1B-8 (2015).

7 C. Hospitals are not entitled to claim a deduction under Section 7-9-93. *See* NMSA  
8 1978, § 7-9-93. *See also Golden Services*, No. A-1-CA-36987.

9 D. Hospitals are not entitled to claim a deduction under Section 7-9-77.1. *See* NMSA  
10 1978, § 7-9-77.1. *See also Sec. Escrow Corp.*, 1988-NMCA-068, ¶ 8. *See also Wing Pawn Shop*,  
11 1991-NMCA-024, ¶ 16. *See also Chavez*, 1970-NMCA-116, ¶ 7. *See also Pittsburgh and*  
12 *Midway Coal Mining Co.*, 1983-NMCA-019.

13 E. The Taxpayer is not the prevailing party and is not entitled to an award of  
14 administrative costs and fees. *See* NMSA 1978, § 7-1-29.1.

15 For the foregoing reasons, the Department’s Motion for summary judgment is **HEREBY**  
16 **GRANTED**, and the Taxpayer’s protest **IS DENIED**.

17 DATED: January 13, 2023.

18 *Dee Dee Hoxie*  
19 \_\_\_\_\_  
20 Dee Dee Hoxie  
21 Hearing Officer  
22 Administrative Hearings Office  
23 P.O. Box 6400  
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**

14 On January 13, 2023, a copy of the foregoing Decision and Order was submitted to the  
15 parties listed below in the following manner:

16 *First Class Mail and Email*

*First Class Mail and Email*

17  
18  
19 *INTENTIONALLY BLANK*