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

**IN THE MATTER OF THE PROTEST OF
LEA REGIONAL HOSPITAL
TO DENIAL OF REFUND ISSUED UNDER LETTER
ID NOs. L0926992688 and L0472566064**

v. Case No. N/A, D&O No. 23-4

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

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

This matter came before the Administrative Hearings Office, Hearing Officer Chris Romero, Esq., upon the following: (1) Department’s Motion For Summary Judgment and Brief in Support (filed July 15, 2022) (“Department’s Motion”); (2) Lea Regional Hospital’s Response to Taxation and Revenue Department’s Motion for Summary Judgment (filed July 29, 2022) (“Taxpayer’s Response”¹); (3) Alta Vista Regional Hospital’s² Motion for Partial Summary Judgment (filed August 29, 2022) (“Taxpayer’s Motion”); and (4) Department’s Objection and Response to Motion for Summary Judgment to Non-Lead Hospitals (filed September 6, 2022) (“Department’s Response”).

A hearing on the foregoing motions was held on November 28, 2022. Lea Regional Hospital, LLC (“Taxpayer”) appeared by and through Mr. Wade Jackson, Esq. The Taxation and Revenue Department (“Department”) appeared by and through Mr. David Mittle, Esq.

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.

² 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 which the parties agreed would be the lead case for all cases categorized as “hospital” cases. The Decision and Order (D&O 23-1) in the protest Alta Vista Regional Hospital was issued on January 13, 2023.

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

6 The facts and legal issues presented concentrate on whether Taxpayer, a hospital, is eligible
7 to deduct any portion of its gross receipts pursuant to NMSA 1978, Sections 7-9-77.1³ or 7-
8 9-93. Since the application of Section 7-9-93 presents a question of law that was resolved in
9 favor of the Department in *Golden Services Home Health and Hospice and Unnamed*
10 *Nursing and Rehabilitation Center v. Taxation and Revenue Dep't*, No. A-1-CA-36987,
11 2020 WL 2045956, mem. op. (NMCA, April 20, 2020) (non-precedential), *cert. denied*,
12 No. S-1-SC-38341 (NMSC, November 17, 2020), the Hearing Officer finds that
13 Taxpayer is not legally entitled to the deduction. The Hearing Officer also finds that
14 Taxpayer is not eligible to claim a deduction under Section 7-9-77.1.

15 For these reasons, which will be addressed in further detail, the Department's
16 Motion should be granted, and Taxpayer's Motion and protest should be denied.
17 Additionally, a prior order of the tribunal entered December 16, 2017, prior to *Golden*
18 *Services*, which denied summary judgment to the Department, should be set aside in
19 favor of this order. IT IS DECIDED AND ORDERED AS FOLLOWS:

20 FINDINGS OF FACT

21 Material Facts

³ Although the undisputed statements of material fact suggest that there is no dispute regarding the application of NMSA 1978, Section 7-9-77.1, the Hearing Officer will also address that statute since Taxpayer previously asserted on January 16, 2018 that the deduction was in dispute.[Administrative File (Taxpayer's Prehearing Statement)]

1 1. Lea Regional Hospital is a hospital. Petitioner is part of Community Health
2 Systems, Inc. which is one of the largest providers of general hospital healthcare services in the
3 United States. Petitioner is located in Hobbs, N.M. and is a 201-bed acute care facility providing
4 complete care from cardiac care and pediatrics to mental health and outpatient surgery.

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

6 2. Under Letter Id. No. L0926992688:

- 7 a. The applicable period is January 1, 2013 through December 31, 2014.
- 8 b. The Application for Refund was filed August 19, 2016.
- 9 c. Refund is sought under NMSA Section 7-9-93 (2007) plus administrative
10 fees.

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

12 3. Under Letter Id. No. L0472566064:

- 13 a. The applicable period is January 1, 2013 through December 31, 2014.
- 14 b. The Application for Refund was filed August 19, 2016.
- 15 c. Refund is sought under Section 7-9-93 (2007) plus administrative fees.

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

17 4. On February 3, 2017, the Department issued a denial of Taxpayer’s requested
18 refund under Letter ID No. L0926992688. [Administrative File (accompanying Hearing Request
19 filed April 18, 2017)]

20 5. The denial under Letter ID No. L0926992688 explained that the refund of
21 \$938,140.00 for the period ending December 31, 2014 “has been reviewed and denied.” It went
22 on to explain that “[a] Request for Additional Information notice was mailed to you on
23 December 13, 2016” and that the requested information was not received by the deadline of
24 January 15, 2017. [Administrative File (accompanying Hearing Request filed April 18, 2017)]

25 6. On February 14, 2017, the Department issued a denial of Taxpayer’s requested
26 refund under Letter ID No. L0472566064. [Administrative File (accompanying Hearing Request

1 filed April 18, 2017)]

2 7. The denial under Letter ID No. L0472566064 explained that the refund of
3 \$563,338.00 for the period ending December 31, 2015 “has been reviewed and denied.” It went
4 on to explain that “[a] Request for Additional Information notice was mailed to you on
5 December 7, 2017” and that the requested information was not received by the deadline of
6 January 19, 2017. [Administrative File (accompanying Hearing Request filed April 18, 2017)]

7 8. On February 21, 2017, Taxpayer’s Formal Protest of the Department denial under
8 Letter ID No. L0926992688 was stamped received in the Department’s Protest Office.
9 [Administrative File (accompanying Hearing Request filed April 18, 2017)]

10 9. On March 1, 2017, Taxpayer’s Formal Protest of the Department denial under
11 Letter ID No. L0472566064 was stamped received in the Department’s Protest Office.
12 [Administrative File (accompanying Hearing Request filed April 18, 2017)]

13 Procedural History
14 *(Pre Golden Services)*

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

19 10. On March 8, 2017, the Department separately acknowledged both of Taxpayer’s
20 protests under Letter ID No. L0593385776 and Letter ID No. L2118244656. [Administrative
21 File (accompanying Hearing Request filed April 18, 2017)]

22 11. On April 18, 2017, the Department filed a combined Hearing Request in the
23 matter of Taxpayer’s protests. [Administrative File]

24 12. On April 21, 2017, the Administrative Hearings Office entered a Notice of

1 Telephonic Scheduling Conference which set an initial hearing to occur on May 15, 2017.

2 [Administrative File]

3 13. An initial telephonic scheduling hearing occurred on May 15, 2017. Neither party
4 objected that that hearing satisfied the 90-day hearing deadline of NMSA 1978, Section 7-1B-8
5 (A). [Administrative File]

6 14. On May 16, 2017, the Administrative Hearings Office entered a Scheduling Order
7 and Notice of Administrative Hearing. [Administrative File]

8 15. On May 23, 2017, the Department filed Taxation and Revenue Department's
9 Motion for Partial Judgment. [Administrative File]

10 16. On July 7, 2017, Taxpayer timely filed Lea Regional Hospital LLC's Response to
11 Taxation and Revenue Department's Motion for Partial Judgment on the Protest. [Administrative
12 File]

13 17. On October 13, 2017, the Department timely filed Department's Reply Brief.
14 [Administrative File]

15 18. On October 12, 2017, Taxpayer timely filed Lea Regional Hospital LLC's Sur-
16 Reply to Taxation and Revenue Department's Reply to Hospital's Response to Department's
17 Motion for Partial Judgment on the Protest. [Administrative File]

18 19. On October 27, 2017, Taxpayer filed Lea Regional Hospital LLC's Supplemental
19 Brief on the Constitutional Prohibitions Against Retroactive Operation of the Senate Bill 6.
20 [Administrative File]

21 20. On October 27, 2017, the Department filed Department's Brief Addressing
22 Article IV, Section 24 of the New Mexico Constitution. [Administrative File]

23 21. On December 15, 2017, the Administrative Hearings Office entered an Order

1 Denying Department's Motion for Partial Judgement. [Administrative File]

2 22. On December 15, 2017, Taxpayer filed Taxpayer's Motion for Summary
3 Judgment, and on December 19, 2017, Taxpayer filed a notice of Correction to Taxpayer's
4 Motion for Summary Judgment. [Administrative File]

5 23. On December 29, 2017, the Department filed Department's Response to Motion
6 for Summary Judgment. [Administrative File]

7 24. On January 11, 2018, Taxpayer filed Taxpayer's Reply in Support of Motion for
8 Summary Judgment. [Administrative File]

9 25. On January 16, 2018, Taxpayer filed Taxpayer's Prehearing Statement in which it
10 asserted that the only deductions in contention were those provided by NMSA 1978, Section 7-9-
11 93 and 7-9-77.1. [Administrative File]

12 26. On January 18, 2018, the Department filed Taxation and Revenue Department's
13 Notice of Filing Appeal and Motion to Stay explaining that "[b]ecause the determinative issue of
14 whether the Taxpayer is entitled to a deduction under Section 7-9-93 is before the Court of
15 Appeals, this protest should be stayed." Taxpayer did not oppose the request to stay the
16 proceeding. [Administrative File]

17 27. The Hearing Officer takes administrative notice that the appeal subject of the
18 Department's request was *Golden Services* and a second, unnamed⁴ nursing home facility.

19 28. On January 23, 2018, the Department filed Department's Motion to Reconsider
20 the Hearing Officer's Order Denying Department's Motion for Partial Summary Judgement
21 entered December 15, 2017. [Administrative File]

⁴ 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 for Dispositive Motions, Responses, and Replies. The order permitted the parties to stipulate to
2 extensions of deadlines without need for an order of the Administrative Hearings Office so long
3 as their agreement was mutual and memorialized in writing. [Administrative File]

4 36. On June 9, 2022, approximately eleven months after the Administrative Hearings
5 Office entered its briefing schedule on July 14, 2021, and nearly 26 months after entry of *Golden*
6 *Services*, the Administrative Hearings Office entered Order Modifying Briefing Schedule for
7 Dispositive Motions, Responses and Replies. The order set firm deadlines for filing the
8 dispositive motions contemplated by the parties in July of 2021⁶. [Administrative File]

9 37. On June 14, 2022, the Department filed Department's Motion to Vacate Order
10 Modifying Briefing Schedule for Dispositive Motions, Responses, and Replies as well as a
11 separate Unopposed Motion to Exceed Page Limit. [Administrative File]

12 38. On June 27, 2022, the Administrative Hearings Office informally notified the
13 parties by email that it would consider reasonable alternatives to the order entered on June 9,
14 2022 and encouraged the parties to confer and respond by motion on or before July 1, 2022.
15 [Administrative File]

16 39. On July 6, 2022, the parties filed a Joint Motion to Extend Briefing Schedule.
17 [Administrative File]

18 40. 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]

⁶ 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 entitled to a judgment as a matter of law, the burden shifts to the opposing party to show
2 evidentiary facts that would require a trial on the merits. *See Roth v. Thompson*, 1992-NMSC-
3 011, ¶17, 113 N.M. 331.

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

7 Burden of Proof

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

12 The Gross Receipts and Compensating Tax Act, for the privilege of engaging in business,
13 imposes excise taxes of specified percentages on gross receipts on any person engaging in
14 business in New Mexico. “To prevent evasion of the gross receipts tax and to aid in its
15 administration, it is presumed that all receipts of a person engaging in business are subject to the
16 gross receipts tax. *See* NMSA 1978, Section 7-9-4 (2010, Amended 2022). For the purpose of
17 enforcing the tax, there is a presumption that all receipts of a person engaging in business in New
18 Mexico are subject to gross receipts tax. *See* Section 7-9-5(A) (2019).

19 Taxpayers may, however, reduce their gross receipts tax obligations by availing
20 themselves of deductions and exemptions authorized by the Legislature. “[D]eductions are a
21 matter of legislative grace and a way of achieving [the Legislature’s] policy objectives.” *See*
22 *Sutin, Thayer & Browne v. Revenue Div. of Taxation & Revenue Dept.*, 1985-NMCA-047, ¶ 17,
23 104 N.M. 633, 636, 725 P.2d 833, 836. The right to a deduction must be clear and unambiguous

1 with a strict construction against the taxpayer. *Sec. Escrow Corp. v. State Taxation and Revenue*
2 *Dep't.*, 1988-NMCA-068, ¶ 8, 107 N.M. 540. *See also Wing Pawn Shop v. Taxation and*
3 *Revenue Dep't.*, 1991-NMCA-024, ¶ 16, 111 N.M. 735. *See also Chavez v. Commissioner of*
4 *Revenue*, 1970-NMCA-116, ¶ 7, 82 N.M. 97. *See also Pittsburgh and Midway Coal Mining Co.*
5 *v. Revenue Division*, 1983-NMCA-019, 99 N.M. 545.

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

10 Even if a taxpayer can establish a legal entitlement to a deduction, a taxpayer seeking a
11 refund must support the amount of the refund claimed with credible documentation. *See NMSA*
12 *1978, Section 7-1-26 (A) (5) and (C) (2019)*. Accordingly, it is not enough that a taxpayer
13 establishes a legal right to a refund, but it must also come forward with evidence to establish the
14 facts supporting the amount of the refund. *See TPL, Inc.*, 2003-NMSC-007, ¶ 9.

15 In this case, while Taxpayer claims it is eligible for a deduction under either Section 7-9-
16 77.1 or Section 7-9-93, the Department argues, that because a hospital’s deductions are limited to
17 Section 7-9-73.1, neither Section 7-9-77.1 nor Section 7-9-93 are applicable. Under the facts
18 presented in this protest, the Department is correct.

19 As a preliminary and overarching observation pertinent to the Department’s assertion, it
20 relies on the rule of statutory construction that “[a] conferral of specific authority trumps any
21 previous conferral of general authority.” *See Matter of Estate of McElveny*, 2017-NMSC-024, ¶
22 21, 399 P.3d 919. The legislature has specifically addressed hospitals and those particular
23 deductions from gross receipts for which they qualify. *See Section 7-9-73.1*. Except for costs

1 incurred in the construction of hospitals, the Department asserts that the Legislature has not
2 explicitly provided hospitals any other deduction from gross receipts other than Section 7-9-73.1.
3 The Department’s argument, in conjunction with the holding of *Golden Services* persuasively
4 establishes that the Legislature did not intend to confer eligibility for a hospital to claim a gross
5 receipts deduction under Section 7-9-77.1 or Section 7-9-93.

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

8 Application of Section 7-9-93 to Hospitals

9 As counsel are aware, application of Section 7-9-93 to entities, such as hospitals, has
10 been considered several times by this tribunal. Although this tribunal has previously ruled⁷ that
11 hospitals could qualify for the deduction provided by Section 7-9-93, the Court of Appeals in
12 *Golden Services*, an unpublished decision, concluded that Section 7-9-93 does not permit entities
13 such as hospitals to claim a deduction from gross receipts. Instead, the deduction is limited to
14 receipts received for the services of individual health care practitioners.

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

16 Receipts from payments by a managed health care provider or
17 health care insurer for commercial contract services or medicare
18 part C services provided by a health care practitioner ... may be
19 deducted from gross receipts[.]

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

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

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

7 Given the [Fiscal Impact Reports] and the bill titles, the
8 Department’s presumptively correct regulations, Taxpayers’
9 burden to establish its entitlement to the deduction, and most
10 importantly, the possible interpretation of the statute’s language
11 itself that the deduction is limited only to health care practitioners,
12 we conclude that, *Taxpayers, as health care facilities*, and not
13 individual practitioners, *are not entitled to claim the deduction*.

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

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

16 -finalizes once and for all that the Legislature does not intend to
17 bestow a tax deduction to simply “any taxpayer” and thus non-
18 practitioner transactions do not fall within the purview of Section
19 7-9-93 (2016).

20 *See Golden Services*, ¶ 26.

21 In the special concurrence, Judge Ives further observed:

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

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

26 As part of its evaluation, *Golden Services* also observed that the two regulations directly
27 addressing the applicability of the deduction under Section 7-9-93 were presumptively proper
28 interpretations of the statute. *See Golden Services*, ¶ 21; *See also* Regulations 3.2.241.13 and
29 3.2.241.17 NMAC (2006).

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

13 One regulation prohibits “[a]n organization, whether or not owned exclusively by health
14 care practitioners, licensed as a hospital, hospice, nursing home, ... an outpatient facility or
15 intermediate care facility” from taking the deduction. *See* Regulation 3.2.241.17 NMAC (2006).
16 The regulation indicates that such a facility “is not a ‘health care practitioner’ as defined by
17 Section 7-9-93”. *Id.* The other regulation actually allows for “[a] corporation, unincorporated
18 business association, or other legal entity” to take the deduction for payments on services
19 performed “on its behalf by health care practitioners who own or are employed by the
20 corporation, unincorporated business association or other legal entity.” *See* Regulation
21 3.2.241.13 NMAC (2006). However, the regulation creates an exception to that allowance when
22 that entity is a 501 (C) (3) organization or “an HMO, hospital, hospice, nursing home, an ...

1 outpatient facility or intermediate care facility”. *Id.* These excepted entities may not take the
2 deduction. *See id.*

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

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

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

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

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

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

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

1 precedential), explained:

2 Taxpayer argues that *Golden Services* is not binding and was
3 ‘wrongly decided,’ and it urges this Court to review the motion for
4 rehearing filed in *Golden Services* and to rely on *In the Matter of*
5 *the Protest of HealthSouth Rehabilitation*, No. 16-16, 2016 WL
6 2958471 (N.M. Tax’n & Revenue Dep’t May 11, 2016) (dec. &
7 order), which is the written decision of an administrative hearing
8 officer. These assertions provide no reason in this case to divert
9 from the conclusion of this Court in *Golden Services*.

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

13 The Department presented several other arguments to support and solidify its position⁸
14 regarding the application and limitations of Section 7-9-93, but the Hearing Officer need not
15 address those since *Golden Services* resolves the question of statutory construction over which
16 the parties quarrel without need for further discussion.

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

19 Application of Section 7-9-77.1 to Hospitals

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

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

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

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

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

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

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

1 *hospitals licensed by the department of health may be deducted from gross receipts...*)

2 (Emphasis Added)

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

7 The Legislature’s approach to drafting Section 7-9-77.1 was similar to its approach to
8 Section 7-9-93 and they should be construed in like manner. Since the 2007 versions of both
9 statutes began with “[r]eceipts from payments” and the 2016 versions were both amended to
10 “[r]eceipts of a health care practitioner”, it stands to reason that the same statutory interpretation
11 should apply to both statutes. *See* NMSA 1978, Section 7-9-77.1 (2007) and (2016) and Section
12 7-9-93 (2007) and (2016). *See also Golden Services*, No. A-1-CA-36987.

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

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

20 These observations persuaded the Hearing Officer that if the Legislature intended
21 hospitals to claim any deduction under Section 7-9-77.1, it would have explicitly provided that
22 right in the statute, as similarly observed in *Golden Services*. *See also Pub. Serv. Co. of New*
23 *Mexico v. Diamond D Const. Co., Inc.*, 2001-NMCA-082, ¶ 50, 131 N.M. 100, 115, 33 P.3d 651,

1 666 (“[S]tatutes concerning similar subject matter, relevant common law principles, and public
2 policy [] guide us in our interpretation.”)

3 For these reasons, hospitals are not entitled to deduct gross receipts under Section 7-9-
4 77.1.

5 Administrative Costs and Fees

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

9 CONCLUSION

10 For the stated reasons, Department’s Motion should be, and hereby is GRANTED.
11 Taxpayer’s Motion should be, and hereby is DENIED. The previous Order Denying
12 Department’s Motion for Partial Judgment, entered prior to *Golden Services* on December 7,
13 2017, should be and hereby is set aside in favor of this order. Taxpayer’s protest should be, and
14 hereby is, DENIED.

15 CONCLUSIONS OF LAW

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

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

20 C. The parties did not object that conducting the scheduling hearing satisfied the 90-
21 day hearing requirements of Section 7-1B-8 (A) while still allowing meaningful time for
22 completion of the other statutory requirements under Section 7-1B-6 (D). *See also* Regulation
23 22.600.3.8 (E) NMAC.

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

3 E. Hospitals are not entitled to claim a deduction under NMSA 1978, Section 7-9-
4 77.1. *See* NMSA 1978, Section 7-9-77.1.

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

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

8 DATED: January 18, 2023

9 

10 Chris Romero
11 Hearing Officer
12 Administrative Hearings Office
13 P.O. Box 6400
14 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 18 day of January,
3 2023 in the following manner:

4
5 *INTENTIOANLLY BLANK*