

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

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

**IN THE MATTER OF THE PROTEST OF  
ROSWELL CLINIC CORPORATION  
TO TAXATION & REVENUE DEPARTMENT'S  
FAILURE TO GRANT OR DENY A REFUND**

v.

Case No. N/A, D&O 23 – 05

**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) Roswell Clinic Corporation's Response to Taxation and Revenue Department's Motion for Summary Judgment (filed July 29, 2022) ("Taxpayer's Response"<sup>1</sup>); (3) Alta Vista Regional Hospital's<sup>2</sup> 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. Roswell Clinic Corporation ("Taxpayer") appeared by and through Mr. Wade Jackson, Esq. The Taxation and Revenue Department ("Department") appeared by and through Mr. David Mittle, Esq.

---

<sup>1</sup> 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.

<sup>2</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 since that was the case the parties selected as their lead case for protests 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 7-9-77.1 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 provided by Section 7-9-93 or the  
14 similarly-structured deduction at Section 7-9-77.1.

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

18 **FINDINGS OF FACT**

19 Material Facts

20 1. Roswell Clinic Corporation is a hospital. “Petitioner is a multi-specialty  
21 physicians group with practices located in Roswell, New Mexico. These practices specialize in a  
22 wide variety of health services including primary care, gastroenterology, cardiology, general and  
23 vascular surgery and urology.” [Department’s Motion; Administrative File (Protest)]

- a. The applicable period is January 1, 2012 through December 31, 2015.
- b. The Application for Refund was filed September 28, 2016.
- c. Refund is sought under NMSA Section 7-9-93 (2007) and Section 7-9-77.1, plus administrative fees.

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

2. Taxpayer filed its Application for Refund on September 28, 2016. The Department did not grant or deny Taxpayer’s application within 120 days from the date of filing.

[Administrative File (Taxpayer’s Protest)]

Procedural History  
*(Pre Golden Services)*

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

3. On April 24, 2017, Taxpayer’s Formal Protest of the Department’s failure to grant or deny its Application for Refund was stamped received in the Department’s Protest Office.

[Administrative File (accompanying Hearing Request filed June 26, 2017)]

4. On May 12, 2017, the Department acknowledged Taxpayer’s protest under Letter ID No. L0371430704 noting that the protest stemmed from the “Department’s failure to grant or deny refund claim in the amount of \$672,780.00” for “periods December 1, 2012 through December 31, 2015[.]”

[Administrative File (accompanying Hearing Request filed June 26, 2017)]

5. On June 26, 2017, the Department filed a Hearing Request in the matter of Taxpayer’s protest of the Department’s failure to grant or deny its Application for Refund.

[Administrative File]

6. On June 27, 2017, the Administrative Hearings Office entered a Notice of

1 Telephonic Scheduling Hearing which set an initial hearing in the protest for July 14, 2017.

2 [Administrative File]

3 7. An initial scheduling hearing occurred on July 14, 2017 at which time the parties  
4 agreed that the hearing satisfied the 90-day hearing requirement under NMSA 1978, Section 7-  
5 1B-8 (A). The parties also requested that the matter be held “in abeyance pending resolution of  
6 the scope and applicability of the §7-9-93 deduction[.]” [Administrative File]

7 8. The Hearing Officer takes administrative notice that the appeal referenced on the  
8 Order Holding the Matter in Abeyance was *Golden Services* and a second, unnamed<sup>3</sup> nursing  
9 home facility.

10 *Post Golden Services*

11 9. 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 10. 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 11. On April 30, 2021, Taxpayer filed Taxpayer’s Response and Objection to the  
20 Hearing Officer’s Proposed Summary Disposition. [Administrative File]

21 12. On June 2, 2021, the Administrative Hearings Office entered an Order to Conduct

---

<sup>3</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 Informal Conference and Notice of Telephonic Scheduling Hearing. [Administrative File]

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

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

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

14 16. On June 27, 2022, the Administrative Hearings Office informally notified the  
15 parties by email that it would consider reasonable alternatives to the order entered on June 14,  
16 2022 and encouraged the parties to confer and respond by motion on or before July 1, 2022.  
17 [Administrative File]

18 17. On July 6, 2022, the parties filed a Joint Motion to Extend Briefing Schedule in  
19 Alta Vista Regional Hospital (the lead case) which proposed that this protest be categorized as a  
20 "hospital" case and proceed to summary judgment with other hospital cases in which Alta Vista

---

<sup>4</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 would be the lead case for purposes of legal briefing. [Administrative File]

2 18. Also on July 6, 2022, the parties filed a Joint Motion to Extend Briefing Schedule  
3 in which Roswell Clinic Corporation was also classified as “other.” However, subsequent  
4 treatment of taxpayer was consistent with the intention that Taxpayer be classified as a “hospital”  
5 and that Taxpayer’s concurrent identification as “other” was erroneous. [Administrative File;  
6 Department’s Motion; Record of Hearing (11/28/2022)]

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

10 20. On July 15, 2022, the Department filed Department’s Motion for Summary  
11 Judgment and Brief in Support. [Administrative File]

12 21. On July 25, the Department filed Department’s Objection to Amended Order  
13 Modifying Briefing Schedule for Dispositive Motions, Responses, and Replies. [Administrative  
14 File]

15 22. On July 29, 2022, Taxpayer filed Roswell Clinic Corporation’s Response to  
16 Taxation and Revenue Department’s Motion for Summary Judgment. [Administrative File]

17 23. On August 4, 2022, the Administrative Hearings Office entered Order on  
18 Department’s Objection to Amended Order Modifying Briefing Schedule for Dispositive  
19 Motions, Responses, and Replies. [Administrative File]

20 24. On August 29, 2022, Taxpayer filed Alta Vista Regional Hospital’s Motion for  
21 Partial Summary Judgment which provided Taxpayer’s legal argument in this protest. Alta Vista  
22 Regional Hospital was the lead case in the “hospital” category. [Administrative File]

23 25. On September 6, 2022, the Department filed Department’s Objection and

2 **DISCUSSION**

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

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

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

14 The parties agreed that there were no disputes as to the material fact that the Taxpayer is  
15 a hospital. The parties also agreed that an outcome in favor of the Department would be  
16 dispositive to the issues of the hearing and result in a final appealable Decision and Order. An  
17 outcome in favor of the Taxpayer would result in the protest being placed on the docket for a  
18 hearing on the merits<sup>5</sup>.

19 The issues presented in this case are appropriate for summary judgment. The primary  
20 question is whether Taxpayer is legally entitled to claim deductions under NMSA 1978, Sections  
21 7-9-77.1 and 7-9-93.

---

<sup>5</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 Burden of Proof

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

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

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

23 Consequently, “[a] taxpayer has the burden of showing that it comes within the terms of a



1 statute permitting a tax deduction. *See Sutin, Thayer & Browne*, 1985-NMCA-047, ¶ 17. A  
2 “deduction must be denied in the absence of a showing of clear legislative intent to permit the  
3 deduction.” *See Sutin, Thayer & Browne*, 1985-NMCA-047, ¶ 18.

4 Even if a taxpayer can establish a legal entitlement to a deduction, a taxpayer seeking a  
5 refund must support the amount of the refund claimed with credible documentation. *See NMSA*  
6 1978, Section 7-1-26 (A) (5) and (C) (2019). Accordingly, it is not enough that a taxpayer  
7 establishes a legal right to a refund, but it must also come forward with evidence to establish the  
8 facts supporting the amount of the refund. *See TPL, Inc.*, 2003-NMSC-007, ¶ 9.

9 In this case, while Taxpayer claims it is eligible for a deduction under either Section 7-9-  
10 77.1 or Section 7-9-93, the Department argues, that because a hospital’s deductions are limited to  
11 Section 7-9-73.1, neither Section 7-9-77.1 nor Section 7-9-93 are applicable. Under the facts  
12 presented in this protest, the Department is correct.

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

23 The discussion will begin with the application of Section 7-9-93 which the Hearing

1 Officer perceives to be the crux of the dispute at hand.

2 Application of Section 7-9-93 to Hospitals

3 As counsel are aware, application of Section 7-9-93 to entities, such as hospitals, has  
4 been considered several times by this tribunal. Although this tribunal has previously ruled<sup>6</sup> that  
5 hospitals could qualify for the deduction provided by Section 7-9-93, the Court of Appeals in  
6 *Golden Services*, an unpublished decision, concluded that Section 7-9-93 does not permit entities  
7 such as hospitals to claim a deduction from gross receipts. Instead, the deduction is limited to  
8 receipts received for the services of individual health care practitioners.

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

10 Receipts from payments by a managed health care provider or  
11 health care insurer for commercial contract services or medicare  
12 part C services provided by a health care practitioner ... may be  
13 deducted from gross receipts[.]

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

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

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

24 Given the [Fiscal Impact Reports] and the bill titles, the

---

<sup>6</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 Department’s presumptively correct regulations, Taxpayers’  
2 burden to establish its entitlement to the deduction, and most  
3 importantly, the possible interpretation of the statute’s language  
4 itself that the deduction is limited only to health care practitioners,  
5 we conclude that, *Taxpayers, as health care facilities*, and not  
6 individual practitioners, *are not entitled to claim the deduction*.

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

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

9 -finalizes once and for all that the Legislature does not intend to  
10 bestow a tax deduction to simply “any taxpayer” and thus non-  
11 practitioner transactions do not fall within the purview of Section  
12 7-9-93 (2016).

13 *See Golden Services*, ¶ 26.

14 In the special concurrence, Judge Ives further observed:

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

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

19 As part of its evaluation, *Golden Services* also observed that the two regulations directly  
20 addressing the applicability of the deduction under Section 7-9-93 were presumptively proper  
21 interpretations of the statute. *See Golden Services*, ¶ 21; *See also* Regulations 3.2.241.13 and  
22 3.2.241.17 NMAC (2006).

23 The purpose of the Department’s regulations is “to interpret, exemplify, implement and  
24 enforce the provisions of the Gross Receipts and Compensating Tax Act.” *See* Regulation 3.2.1.6  
25 NMAC (2001). The Department has authority to enact regulations that interpret and exemplify  
26 the statutes to which they relate. *See* NMSA 1978, Section 9-11-6.2 (B) (1) (2015). The  
27 Department’s regulations also carry a presumption that they are a “proper implementation of the  
28 provisions of the laws”. NMSA 1978, Section 9-11-6.2 (G). *See also Chevron U.S.A. Inc. v.*  
29 *State ex rel. Taxation and Revenue Dep’t*, 2006-NMCA-050, ¶ 16, 139 N.M. 498 (holding that

1 agency regulations that interpret a statute are presumed to be proper). Regulations are also to be  
2 interpreted in accordance with legislative intent and in a manner that does not lead to an absurd,  
3 unreasonable, or unjust result. *See Hess Corp. v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-  
4 043, 149 N.M. 527 *See also Johnson v. NM Oil Conservation Com'n*, 1999-NMSC-021, 127 NM  
5 120 (holding that canons of construction that apply to statutes also apply to rules and regulations).

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

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

22 Nonetheless, Taxpayer asserts that *Golden Services* should not be afforded persuasive  
23 value because it is an unpublished decision and because it was “wrongly decided.” Taxpayer

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

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

17 Taxpayer is correct that an unpublished decision is not controlling precedent. *See* Rule 12-  
18 405 NMRA (2012). *See also Hess Corp. v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-043,  
19 ¶ 35, 149 N.M. 527 (indicating that unpublished opinions and orders are written solely for the  
20 benefit of the parties and have no controlling precedential value). *See also Inc. County of Los*  
21 *Alamos v. Montoya*, 1989-NMCA-004, ¶ 6, 108 N.M. 361 (noting that unpublished caselaw is  
22 not binding precedent). *See State v. Granillo-Macias*, 2008-NMCA-021, ¶ 11, 143 N.M. 455  
23 (noting that unpublished orders, decisions, and opinions are not controlling and are written solely

1 for the benefit of the parties). *See State v. Gonzales*, 1990-NMCA-040, ¶ 47-48, 110 N.M. 218  
2 (noting that unpublished orders, decisions, and opinions are not meant to be controlling authority  
3 and that they rarely describe the context of the issue at length, which may be of controlling  
4 importance to the decision).

5 However, unpublished decisions may nevertheless be cited for their persuasive  
6 significance. *See* Rule 12-405 NMRA (stating that unpublished decisions are not precedent but  
7 may still be persuasive). *See also State v. Stevenson*, 2020-NMCA-005, ¶ 25 (considering an  
8 unpublished decision for its persuasive value), *cert. denied*, No. S-1-SC-38015 (December 26,  
9 2019).

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

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

18 Taxpayer argues that *Golden Services* is not binding and was  
19 ‘wrongly decided,’ and it urges this Court to review the motion for  
20 rehearing filed in *Golden Services* and to rely on *In the Matter of*  
21 *the Protest of HealthSouth Rehabilitation*, No. 16-16, 2016 WL  
22 2958471 (N.M. Tax’n & Revenue Dep’t May 11, 2016) (dec. &  
23 order), which is the written decision of an administrative hearing  
24 officer. These assertions provide no reason in this case to divert  
25 from the conclusion of this Court in *Golden Services*.

26 The Hearing Officer is not inclined to divert from the Court’s reasoning and conclusion  
27 in *Golden Services*. The Hearing Officer respects the guidance provided by *Golden Services* and

1 will faithfully adhere to its reasoning and conclusion.

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

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

#### 8 Application of Section 7-9-77.1 to Hospitals

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

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

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

---

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

2 A. Receipts of a health care practitioner from payments by the  
3 United States government or any agency thereof for provision of  
4 medical and other health services by a health care practitioner or of  
5 medical or other health and palliative services by hospices or  
6 nursing homes to medicare beneficiaries pursuant to the provisions  
7 of Title 18 of the federal Social Security Act may be deducted  
8 from gross receipts.

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

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

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

26 The Legislature’s approach to drafting Section 7-9-77.1 was similar to its approach to  
27 Section 7-9-93 and they should be construed in like manner. Since the 2007 versions of both



1 statutes began with “[r]eceipts from payments” and the 2016 versions were both amended to  
2 “[r]eceipts of a health care practitioner”, it stands to reason that the same statutory interpretation  
3 should apply to both statutes. *See* NMSA 1978, Section 7-9-77.1 (2007) and (2016) and Section  
4 7-9-93 (2007) and (2016). *See also Golden Services*, No. A-1-CA-36987.

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

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

12 These observations persuaded the Hearing Officer that if the Legislature intended  
13 hospitals to claim any deduction under Section 7-9-77.1, it would have explicitly provided that  
14 right in the statute, as similarly observed in *Golden Services*. *See also Pub. Serv. Co. of New*  
15 *Mexico v. Diamond D Const. Co., Inc.*, 2001-NMCA-082, ¶ 50, 131 N.M. 100, 115, 33 P.3d 651,  
16 666 (“[S]tatutes concerning similar subject matter, relevant common law principles, and public  
17 policy [] guide us in our interpretation.”)

18 For these reasons, hospitals are not entitled to a deduction under Section 7-9-77.1.

#### 19 Administrative Costs and Fees

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

22 For that reason, Taxpayer’s request for costs and fees is denied.  
23

1 **CONCLUSION**

2 For the stated reasons, Department’s Motion should be, and hereby is GRANTED.

3 Taxpayer’s Motion should be, and hereby is DENIED. Taxpayer’s protest should be, and hereby  
4 is, DENIED.

5 **CONCLUSIONS OF LAW**

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

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

10 C. The parties did not object that conducting the scheduling hearing satisfied the 90-  
11 day hearing requirements of Section 7-1B-8 (A) while still allowing meaningful time for  
12 completion of the other statutory requirements under Section 7-1B-6 (D). *See also* Regulation  
13 22.600.3.8 (E) NMAC.

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

16 E. Hospitals are not entitled to claim a deduction under NMSA 1978, Section 7-9-  
17 77.1. *See* NMSA 1978, Section 7-9-77.1.

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

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

21 DATED: January 20, 2023

22 

23 Chris Romero, Hearing Officer  
24 Administrative Hearings Office

1  
2

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

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing on the parties listed below this 20<sup>th</sup> day of  
3 January, 2023 in the following manner:

4  
5  
6 *INTENTIONALLY BLANK*