STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
ROSWELL HOSPITAL CORPORATION
TO DENIAL OF REFUND ISSUED UNDER
LETTER ID NO. L0633088304

v. **Case No. N/A, D&O 23 – 06**

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 Hospital Corporation'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's[2] Motion for Partial Summary Judgment (filed August 29, 2022) ("Taxpayer's Motion"); and (4) Department's Objection and Response to Motion for Summary Judgement to Non-Lead Hospitals (filed September 6, 2022) ("Department's Response).

A hearing on the foregoing motions was held on November 28, 2022. Roswell Hospital Corporation ("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 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.

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

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 (NMCA, April 20, 2020) (non-precedential), *cert.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

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

FINDINGS OF FACT

Material Facts

1. Roswell Hospital Corporation is a hospital. Petitioner is part of Community Health Systems, Inc. which is one of the largest providers of general hospital healthcare services in the United States. Petitioner is located in Roswell, NM and is a 162-bed facility with complete inpatient and outpatient care." [Department's Motion; Administrative File (Protest)]

2. Under Letter Id. No. L0633088304:

a. The applicable period is January 1, 2013 through December 31, 2014.
b. The Application for Refund was filed August 22, 2016.
c. Refund is sought under NMSA Section 7-9-93 (2007) plus administrative fees.

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

3. On February 3, 2017, the Department issued a denial of Taxpayer's requested refund under Letter ID No. L0633088304. [Administrative File (accompanying Hearing Request filed April 18, 2017)]

4. The denial under Letter ID No. L0633088304 explained that the refund of $1,600,006.00 for the period ending December 31, 2014 "has been reviewed and denied." It went on to explain that "[a] Request for Additional Information notice was mailed to you on November 30, 2016" and that the requested information was not received by the deadline of January 2, 2017. [Administrative File (accompanying Hearing Request filed April 18, 2017)]

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.

5. On February 21, 2017, Taxpayer's Formal Protest of the denial issued under Letter ID No. L0633088304 was stamped received in the Department's Protest Office. [Administrative File (accompanying Hearing Request filed April 18, 2017)]

6. On March 8, 2017, the Department acknowledged Taxpayer's protest under Letter ID No. L2116180272. [Administrative File (accompanying Hearing Request filed April 18,

2017)]

7. On April 18, 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]

8. On June 5, 2017, the parties filed a Joint Motion to Hold Matter in Abeyance pending resolution of other similar protests then pending in the Administrative Hearings Office, including *Golden Services* and Alta Vista Regional Hospital (D&O 23-1 issued January 13, 2022). [Administrative File]

9. On July 26, 2017, the parties submitted a joint Waiver of 90 Day Requirement for a Hearing. [Administrative File]

10. On July 28, 2017, the Chief Hearing Officer of the Administrative Hearings Office entered an Order Holding Matter in Abeyance. The order provided that the protest be held "in abeyance pending resolution of the scope and applicability of the §7-9-93 deduction[.]" [Administrative File]

11. The Hearing Officer takes administrative notice that the appeal referenced on the Order Holding the Matter in Abeyance was *Golden Services* and a second, unnamed[3] nursing home facility.

Post Golden Services

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

[3] 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.

precedential)

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

14. On April 22, 2022, the Chief Hearing Officer entered an Order of Administrative Closure of Tax Protest for Inactivity and Lack of Response to Proposed Summary Disposition. [Administrative File]

15. On May 18, 2022, Taxpayer filed Taxpayer's Response to the Hearing Officer's Order of Administrative Closure. [Administrative File]

16. On June 9, 2022, and nearly 26 months after entry of *Golden Services*, the Administrative Hearings Office entered Order Setting Aside Order of Administrative Closure and Briefing Schedule for Dispositive Motions and Responses. The order[4] set firm deadlines for filing dispositive motions. [Administrative File]

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

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

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

[Administrative File]

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

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

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

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

23. On July 29, 2022, Taxpayer filed Roswell Hospital Corporation's Response to Taxation and Revenue Department's Motion for Summary Judgment. [Administrative File]

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

25. On August 29, 2022, Taxpayer filed Alta Vista Regional Hospital's Motion for Partial Summary Judgment which provided Taxpayer's legal argument in this protest. Alta Vista Regional Hospital was the lead case in the "hospital" category and presented the arguments in support of Taxpayer in this case as well as other cases which the parties designated as "hospital" cases. [Administrative File]

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

DISCUSSION

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

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

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

The issues presented in this case are appropriate for summary judgment. The primary question is whether Taxpayer is legally entitled to claim deductions under NMSA 1978, Sections

[5] 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).

7-9-77.1 and 7-9-93.

Burden of Proof

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

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

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

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

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

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

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

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

Application of Section 7-9-93 to Hospitals

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

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

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

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

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

The Court ultimately agreed that the Department's position reflected the intention of the

[6] *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)

Legislature when it enacted Section 7-9-93. It explained:

> Given the [Fiscal Impact Reports] and the bill titles, the Department's presumptively correct regulations, Taxpayers' burden to establish its entitlement to the deduction, and most importantly, the possible interpretation of the statute's language itself that the deduction is limited only to health care practitioners, we conclude that, *Taxpayers, as health care facilities*, and not individual practitioners, *are not entitled to claim the deduction*.
>
> *See Golden Services*, ¶ 24 (Emphases Added)

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

> -finalizes once and for all that the Legislature does not intend to bestow a tax deduction to simply "any taxpayer" and thus non-practitioner transactions do not fall within the purview of Section 7-9-93 (2016).
>
> *See Golden Services*, ¶ 26.

In the special concurrence, Judge Ives further observed:

> [T]he titles of the bills that amended the statute at issue, resulting in the 2007 version, indicate that the Legislature intended to limit the deduction to health care practitioners.
>
> *See Golden Services*, ¶¶ 37, 38 (Ives, J. specially concurring).

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

The purpose of the Department's regulations is "to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act." *See* Regulation 3.2.1.6 NMAC (2001). The Department has authority to enact regulations that interpret and exemplify the statutes to which they relate. *See* NMSA 1978, Section 9-11-6.2 (B) (1) (2015). The Department's regulations also carry a presumption that they are a "proper implementation of the

provisions of the laws". NMSA 1978, Section 9-11-6.2 (G). *See also Chevron U.S.A. Inc. v. State ex rel. Taxation and Revenue Dep't,* 2006-NMCA-050, ¶ 16, 139 N.M. 498 (holding that agency regulations that interpret a statute are presumed to be proper). Regulations are also to be interpreted in accordance with legislative intent and in a manner that does not lead to an absurd, unreasonable, or unjust result. *See Hess Corp. v. N.M. Taxation & Revenue Dep't,* 2011-NMCA-043, 149 N.M. 527 *See also Johnson v. NM Oil Conservation Com'n,* 1999-NMSC-021, 127 NM 120 (holding that canons of construction that apply to statutes also apply to rules and regulations).

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

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

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

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

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

not binding precedent). *See State v. Granillo-Macias*, 2008-NMCA-021, ¶ 11, 143 N.M. 455 (noting that unpublished orders, decisions, and opinions are not controlling and are written solely for the benefit of the parties). *See State v. Gonzales*, 1990-NMCA-040, ¶ 47-48, 110 N.M. 218 (noting that unpublished orders, decisions, and opinions are not meant to be controlling authority and that they rarely describe the context of the issue at length, which may be of controlling importance to the decision).

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

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

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

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

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

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

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

Application of Section 7-9-77.1 to Hospitals

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

Section 7-9-77.1 (2007) provided:

> A. Receipts from payments by the United States government or any agency thereof for provision of medical and other health services by medical doctors, osteopathic physicians, doctors of oriental medicine, athletic trainers, chiropractic physicians, counselor and therapist practitioners, dentists, massage therapists, naprapaths, nurses, nutritionists, dietitians, occupational therapists, optometrists, pharmacists, physical therapists, psychologists, radiologic technologists, respiratory care practitioners, audiologists, speech-language pathologists, social workers and podiatrists or of medical, other health and palliative services by hospices or nursing homes to medicare beneficiaries pursuant to

[7] 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."

> the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

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

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

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

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

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

Section 7-9-77.1.

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

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

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

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

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

Administrative Costs and Fees

The Hearing Officer will not address Taxpayer's request for administrative costs and fees

under NMSA 1978, Section 7-1-29.1 (A) (2015) because Taxpayer is not the prevailing party. For that reason, Taxpayer's request for costs and fees is denied.

CONCLUSION

For the stated reasons, Department's Motion should be, and hereby is GRANTED. Taxpayer's Motion should be, and hereby is DENIED. Taxpayer's protest should be, and hereby is, DENIED.

CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest to the denial of its claimed refund and jurisdiction lies over the parties and the subject matter of this protest.

B. The parties expressly waived conduct of a hearing within 90-days of the Hearing Request under Section 7-1B-8 (A). *See also* Regulation 22.600.3.8 (E) NMAC.

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

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

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

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

DATED: January 20, 2023

Chris Romero, Hearing Officer
Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

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

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing on the parties listed below this 20th day of January, 2023 in the following manner:

INTENTIONALLY BLANK