

VERMONT SUPERIOR COURT
Washington Unit
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Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 25-CV-05679

Galen Jones v. Agency of Transportation

ENTRY REGARDING MOTION

Title: Motion to Strike Exhibit G of Appellant's Reply Brief (Motion: 1)
Filer: C Evangeline James
Filed Date: May 22, 2026

The motion is DENIED.

Appellant Galen Jones, a Vermont resident, leased a car from a New Jersey dealer. The dealer (or its agent) calculated the use tax due to Vermont, and it was paid directly to Vermont. Mr. Jones then filed a request for a refund from the Department of Motor Vehicles (DMV) of an alleged overpayment. 32 V.S.A. § 8914. The purchase price for the car had been reduced at the time of the lease by an \$18,000 “Manufacturer’s Rebate.” The use tax Mr. Jones paid, however, had been calculated without consideration of that discount resulting, in his view, in an improperly inflated purchase price and tax assessment. The DMV denied any refund, and Mr. Jones appealed administratively. 32 V.S.A. § 8905(g). A hearing examiner was appointed, and, after a hearing, she affirmed the DMV’s decision. 32 V.S.A. § 105(a). Mr. Jones then sought review here under Rule 74. 32 V.S.A. § 105(b). The parties’ substantive briefing is complete, and the State has filed a motion to strike certain extra-record evidence introduced by Mr. Jones.

1. The State’s Motion to Strike

In its principal brief, the State seeks to introduce certain extra-record evidence via requests that the court take judicial notice. In his reply, Mr. Jones submitted extra-record evidence as well. The court will not strike Mr. Jones’ extra-record evidence from the record, but it will disregard for purposes of this case all extra-record evidence submitted by either the State or Mr. Jones.

This appeal is subject to record review under Rule 74. The record consists substantially of all writings and exhibits in the agency proceeding as well as the hearing examiner’s decision.

V.R.C.P. 74(d). That record was sent to the court by the agency. Neither party has asserted that anything is missing from that record. The record could have included a transcript of the hearing, but neither party submitted it.¹ *Id.* Nor is a recording of the hearing in the record.

Both parties seek to add evidence to the appellate record that was not part of the administrative record to bolster their appellate arguments. The evidentiary phase of this case ended with the administrative hearing. This appeal is not a continuation of that hearing, and the parties' new evidence is not appropriately considered at this time.

2. The substantive briefing

This case will be set for argument. The court makes no substantive ruling at this time. For the parties' benefit going forward, however, the court offers these preliminary observations.

Vermont imposes a 6% use tax on the "taxable cost" of out-of-state sales or leases of cars. 32 V.S.A. § 8903(b)(1). "Taxable cost" refers to the "purchase price." 32 V.S.A. § 8902(5)(a). "Purchase price," the heart of the dispute in this case, is defined as follows:

"Purchase price" means the gross consideration, exclusive of the tax hereby imposed, that is to be paid for the motor vehicle, expressed in terms of U.S. currency as of the time of the sale, and shall include the cash consideration, if any, plus the value of any services or property given or to be given, or both, in exchange for the motor vehicle. In the case of a lease, the purchase price shall mean an amount computed by subtracting the lease end value of the motor vehicle from the original acquisition cost of the motor vehicle. For purposes of this subdivision, the original acquisition cost of a motor vehicle is the gross consideration that the lessee would pay for the motor vehicle if the lessee purchased the motor vehicle on the date of execution of the lease contract, as stated in the lease contract or worksheet, and the lease end value is the value of the motor vehicle at the end of the lease period, as stated in the lease contract or worksheet or as determined under section 8907 of this title.

32 V.S.A. § 8902(a)(4).

Under this statute, it is reasonably clear that, where one is buying a car outright, the use tax is based on the actual purchase price ("the gross consideration . . . to be paid"). Where one

¹ Mr. Jones argues that certain findings of fact by the hearing examiner seriously distort his testimony at the hearing. The court has no way to evaluate such an argument without a transcript or recording of the hearing.

leases a car, the use tax is based on “the gross consideration that the lessee would pay for the motor vehicle if the lessee purchased the motor vehicle on the date of execution of the lease contract” less the “lease end value.” The “lease end value” is not at issue in this case.

The appearance in the record is that if Mr. Jones had been buying his car outright rather than leasing it, his purchase price actually paid would have been reduced by the \$18,000 “Manufacturer’s Rebate.” That amount was not something that he would have paid to the dealer and then received back later from a third party. See *Camp v. State Dep’t of Motor Vehicles*, 131 Vt. 536, 538 (1973) (“the ‘taxable cost’ of an automobile is to be determined ‘as of the time of the sale.’”). It is by no means clear why any different result would be obtained because he leased, rather than bought, the car.

Originally, the DMV denied Mr. Jones’ refund request, stating as follows:

We are unable to provide a refund for you at this time. It appears the calculation at time of registration was correct. The agreed upon value was signed to agree to say on the original lease agreement \$52,392.44 [before applying the \$18,000 “rebate”] and because the “rebate” is listed as a “Rebate and non-cash credit” indicating it was more than a regular rebate, means the amount is still taxable. We apologize for the inconvenience.

It is unclear what any of this means as far as the actual purchase price, and hence taxable cost, goes.

The rationale of the hearing examiner on appeal is also unclear. The substance of her ruling is as follows:

Federal rebates on vehicles are not excluded from the tax calculation on the purchase price of a vehicle. While the Federal EV rebate was offered to help promote sales of electric vehicles, the rebate is either applied for via a Federal tax application—not state resources, or more recently, were permitted to be offered directly from the Dealer. This rebate is a Federal incentive and does not reduce the taxable sale price of the vehicle. Additionally, there are unanswered questions regarding the exceptionally high amount of the tax rebate received by the Petitioner. The Federal EV rebate was \$7,500 and some manufacturers also offered additional rebates or incentives. Not all cash incentives can be used to reduce the taxable value or purchase price of the vehicle. Without a detailed breakdown of the \$18,000.00 offered by the Dealer to the Petitioner, it is not possible to determine the impact on the taxable value of the Kia. It is the

Petitioner's responsibility to provide such documentation; the only documentation received from the Petitioner was a post-hearing email to VAOT the Hearings, stating that the Dealer told him the \$18,000.00 rebate was a Kia Manufacturing Electric rebate. (Addendum A) Neither the Federal EV rebate nor a manufacturer's cash incentive offer would qualify to reduce the taxable value of a purchased or leased vehicle. With no detailed breakdown of the \$18,000.00 'rebate' offered by the Petitioner, any analysis of what amount might or might not be eligible is simply guesswork. The Petitioner failed to provide sufficient information to prove that any part of the \$18,000.00 was an eligible rebate to reduce the taxable value of the Kia and the Dealer reported the full taxable value of the Kia on their Lease agreement.

Leaving aside for present purposes Mr. Jones' argument that there was no evidence of any such federal rebate, the decision seems clear enough on this: as far as taxable cost goes, there are permissible rebates or incentives and impermissible ones, and the hearing examiner was not persuaded that Mr. Jones' rebate or incentive was permissible.

The problem here is that the applicable statutes draw no such distinction (or mention rebates/incentives at all), neither the hearing examiner nor the State on appeal cited any authority by which one could understand the hearing examiner's rationale, the court has found no applicable rules or regulations to clarify the matter, and the plain meaning of the statutes, at least on their surface, would appear to point in the other direction.

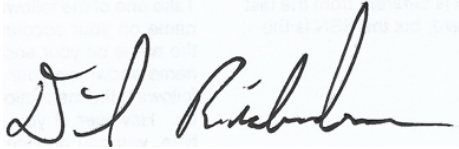
In its briefing, the State relies heavily on an appeal to administrative deference. Such deference, however, is not unlimited and must be anchored in either statutory authority and/or expertise. "[D]eference to an agency's decisions within its area of expertise is not absolute and will not be afforded if the agency fails to provide sufficiently clear guidance on the issue or if the agency's decision is not rational." *Wood v. Wallin*, 2024 VT 21, ¶ 16, 219 Vt. 164; see also *In re Korrow Real Est., LLC Act 250 Permit Amend. Application*, 2018 VT 39, ¶ 25, 207 Vt. 274 (courts do not defer when administrative decision-making is arbitrary and capricious). Despite the State's argument, the Court is unable to conclude from the briefing alone that the distinction drawn by the Agency and the Hearing Officer is one that is reasonably dictated by statute, written rules, policy, or a particular tax practice within the industry that would anchor the decision as a rational exercise of either authority or expertise. For these reasons, the Court will seek further information from the parties, particularly the Agency at oral argument to understand

the basis and methodology for the Agency's position and how this decision process fits within an area of discretion.

ORDER

The State's motion to strike is **Denied**. The Court will not consider evidence from either party that is not of the administrative record in this case. This case will be set for argument on the briefs consistent with the Court's analysis in the present decision.

Electronically signed on 7/13/2026 12:36 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background. The signature is fluid and cursive.

Daniel Richardson
Superior Court Judge